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cash, and prohibiting the issue of bonds in excess of the amount of the capital of the corporation paid in cash, would tend to relieve the public from excessive charges and preserve the interests of those who have become owners in good faith and for value of the shares or bonds of corporations, and would remove one of the causes of financial disturbance and depression in business. No attempt would be made to affect vested interests or stocks and bonds already issued, but the statute should be applicable only to future issues."

In the next year, 1887, Governor Hill recommended the adoption of an act limiting and restricting the power of corporations in the issues of stocks and bonds, and said in connection therewith this: "The manner in which corporations under existing laws are permitted to issue and place upon the market stocks and bonds representing little or no valuable consideration or equivalent in value actually paid in and which, although not legally, are yet in effect a fraud upon the corporations as well as an imposition upon the purchasers and the public, presents a crying abuse and loudly calls for legislative interference." The next year Governor Hill renewed his appeal for legislation limiting and restricting the powers of corporations in their issue of stocks and bonds and said that "Some check should be placed upon corporations in this respect and seems to be urgently required. The existing laws are defective and inadequate to properly protect the public and to guard against the issue of stock and bonds representing little or no valuable consideration and which are essentially, though perhaps not technically, fraudulent or fictitious in their character. Nearly all the monstrous fraudulent transactions of corporations in recent years are traceable to this source, and the time is opportune to render their repetition impossible." In January, 1889, Governor Hill became more specific and direct in his recommendation to the Legislature and advocated the creating of a State commission, and I now quote from his words, "which shall include supervisory powers over gas, telegraph, electric light and telephone companies." That was in 1889. In 1890, Governor Hill expressly renewed his recommendations to the Legislature for the enactment of a measure limiting, regulating and further restricting the powers of corporations in the issuing of stocks and bonds, and here I quote, "A measure creating a State commission which shall include supervisory powers over gas, telegraph, electric light and telephone companies." In his last message to the Legislature, in 1891, Governor Hill said: "Certain recommendations contained in my previous messages may appropriately be renewed at this time." And then I quote a paragraph, "A measure creating a State commission which shall include supervisory powers over gas,

telegraph, electric lighting and telephone companies, similar to the jurisdiction conferred upon the Board of Railroad Commissioners over the railroads of the State. The necessity for some such tribunal has been repeatedly demonstrated but its establishment has thus far been defeated. Its creation, however, may be regarded as only a question of time."

Now, I submit to the members of this Committee that neither Governor Cleveland nor Governor Hill was anything except an old-fashioned conservative. There was not anything radical about Governor Cleveland, except his rugged honesty. There was not anything radical about Governor Hill. But these men saw thirty years ago and twenty-five years ago the absolute necessity from the standpoint of the protection of the people of the State that the public service corporations should be regulated, not only with respect to their service and the rates which they charged the public for such service, but with respect to their issues of corporate stocks and bonds. The Legislature did not respond to any of the recommendations of Governor Hill in regard to the creation of the commission, and I think that the recommendations that came from the Governors in the years intervening between 1891 and 1905, when Governor Higgins occupied the executive chair, did not include repetition of any of these recommendations of either Governor Cleveland or Governor Hill; but in 1905 Governor Higgins did recommend to the Legislature the regulation of several public utilities in addition to railroads and street railroads and certified under Section 15 of Article III to the public necessity of the passage of the act creating a Commission of Gas and Electricity. Now the act of 1905 was the forerunner of the Public Service Commissions Law of this State; in fact the provisions of the Public Service Commissions Law were, so far as related to gas and electrical corporations, copied almost without change from the act of 1905. Now, in 1907, after the Commission of Gas and Electricity had been in operation about two years, Governor Hughes recommended the passage of a more complete law to be known as the Public Service Commissions Law, which was to take into and provide within its limits the regulation theretofore partly given over to a board of railroad commissioners, of the railroads and street railroads, but, in addition, the regulation which had been given to the Commission of Gas and Electricity over the gas and electrical corporations, and in his message to the Legislature in 1907, Governor Hughes said: "The Commission should have all the powers possessed by the present commission and such additional powers as may be needed to insure proper management and operation. Its powers should be clearly defined and should embrace the power to act upon its own initiative as well as upon complaint; to pass upon the issue of stocks and bonds; to examine properties,

books and accounts; to require detailed reports and prescribe forms; to prescribe reasonable rates; to require adequate and impartial service; to provide for the safety of employees and for the protection of the public, and generally to direct whatever may be necessary or proper to safeguard the public interests and to secure the fulfillment of the public obligation of the corporations under its supervision." Now, gentlemen, that is the history, outside the Legislature, coming from Governors who are required by the Constitution to make recommendations to the Legislature, when in their judgment the legitimate requirements of the State shall warrant or direct, but also the action of the Legislature beginning ten years ago — beginning really before that, because as the result of an investigation of the railroads by the Hepburn Committee of the Legislature in 1879, the former Board of Railroad Commissioners was created. They had some powers, very few of regulation, a great many of inspection, and the right to examine into the operation of the railroads and street railroads, and a limited amount of authority in the matter of investigating their accounts, alluded to by Governor Cleveland in 1884, but on the whole the measure was not a radical one. It was extremely conservative, a very mild sort of regulation at best.

Now, the thought of the Committee has been simply this: The Committee has felt after a rather mature consideration of this subject that the matter of regulation on behalf of the State through the establishment of these Commissions is a wise, a conservative and a successful method on the whole. No one would be foolish enough, least of all anybody connected with the work of the commissions, to urge either in this presence or any other, that the matter has been perfect; that nobody has been disappointed; that everything that was predicted by the advocates of the creation of these commissions has actually come to pass. I don't know of any human institution where it can fairly be said that all that might have been hoped for ideally has ever come about. But I think it is perfectly safe to claim on behalf of these commissions that, since they took over this very large jurisdiction and since they undertook to exercise the very considerable discretion and judgment and legislative power vested in them or delegated to them, the regulation of the public service corporations of the State has been entirely free from scandal. I do not believe I go a step too far when I claim that, in the exercise of the jurisdiction that has been given to these commissions, they have demonstrated by ten years of actual record that they are dealing with these matters with absolute integrity; that there is not any back door to either commission, nor any side door, but that everything has been conducted uprightly with a good and fair degree of ability and with energy and a great deal of very hard work. The utmost publicity

was given to the hearings before the Committee on Public Utilities and the public was invited, if they had any opposition, to come to the Committee and state it just as fully as if, on the other hand, they had reasons they desired to urge why the commissions should be recognized in the Constitution. With the single exception of a man who was eminently entitled to be called a "crank"— and we have such people in the State — with the single exception of a man who had made persistent endeavors to control the action of the Public Service Commission of the First District and who had a history in the courts and especially in the First Appellate Division where he had undertaken to likewise control the action of the court and had been sent to jail more than once for contempt — with the exception of this man, nobody representing either himself or any association or group appeared before the Committee in opposition to the suggestion that the Constitution to be drafted by this Convention should incorporate the idea of commission control in matters that are now committed to the commission. Now what is the experience elsewhere than in the State of New York? It is a very singular fact, and, it seems to me, a very significant fact, that there are but two States in the entire forty-eight to-day that do not provide more or less completely for the regulation of the public service corporations, that is to say, railroads, street railroads, gas and electric light companies, telephone and telegraph companies, etc., by commissions. These two States are Utah and Delaware. Most of these States have followed the lead of either New York or of Wisconsin and it is a fact that New York and Wisconsin in the same year — 1907 — developed each for itself a Public Service Commissions Law. The Wisconsin act was a growth in Wisconsin and represented entirely an independent point of view and development. The Public Service Commissions Law in New York was drafted in New York by men familiar with New York conditions, and with such conditions and the reasonable future acutely in mind.

One of the most interesting statements made to our Committee was by Mr. Ivins the week before his sudden and lamented death. On that occasion he very clearly stated to the Committee the ideals that were carried in the minds of the authors of the Public Service Commissions Law as it was finally adopted in the year 1907, and here was the central thought of it all, that so long as the public service of the people, their transportation, their illumination by gas or by electric light, their communication by telephone or telegraph, was to be carried on for them and not by them, the public must be just and fair to those who furnished the capital for these enterprises. Not only that, but they must give such uniform and

just treatment, such adequate return on the whole that those who had money to invest would be led and attracted to investment in the stocks or in the bonds of public service corporations. That meant, of course, that there should be an adequate return paid by the citizen to the public service corporation for the service which he could not procure for himself, furnish to himself, or which the community in which he lived either could not or would not furnish. It was one of the things that was had in mind at that time that there was an irresponsible tendency toward municipal ownership and operation unless the individual could be insured a fair service at a reasonable rate without discrimination against him; that he should not have before him the example of discrimination in favor of somebody else; and, further, that it was not wise, certainly not at the present time, either to bring about or to allow to continue any tendency which could be answered only by the community resorting to the furnishing of these services as municipal or State services. There has been some impatience sometimes on the part of corporations, and more particularly on the part of promoters of corporations, that in the issuance of stocks and bonds they have been unduly hampered. I do not believe that, on the whole, there is just cause for complaint. There may be individual cases. I have no doubt that there are instances where the treatment by the commissions has been possibly too severe. I know there are some instances where it has been too liberal, because the commissions are not able, any more than the courts are, to detect absolutely all the truth. But I think that on the whole the ideal that was held in the year 1907 has been reasonably approached. There has not been any charge, there has not been any reason why there should be any charge, that the "Black Horse Cavalry," mounted or dismounted, has made any assault upon the Public Service Commissions, or either of them. There was a feeling, and I believe it was justified — I know that it was general — that before the creation of the Public Service Commissions the Legislature was approached not only by the Black Horse Cavalry, but by a great many other bodies of men that were enlisted in anything but patriotic endeavors. Now if the idea that gentlemen fitted for these places, educated by experience somewhat outside and educated later by experience upon the Commission — and it is an unique experience. I know many of you that have seen service in the legislative bodies will recognize that a man needs training. Anybody who has ever been on the bench knows that the judge needs to be educated after he is elected — not altogether, but before he can perform his duties to his own satisfaction, anyway. So it has been with these commissioners. There is no doubt a period

of time when anybody going upon a commission is simply a learner, is simply a student. He cannot help making some mistakes. To my mind, these mistakes have been kept within reasonable limits. So the Committee has felt not only that it was warranted in recommending the recognition and perpetuation of the commissions in the Constitution, but it has felt that it was its duty, if it had been correctly informed of the conviction of the public, to make something along the lines of this report.

If you will read this recommendation, as I have already said, it is not a radical one. It recognizes that the Commission should continue. It fixes their terms. It provides in general terms that the jurisdiction shall be as it now is, but it provides specifically that " nothing herein contained shall prevent the Legislature from enacting laws not inconsistent with this section changing such jurisdiction." It was very warmly urged by several witnesses that it ought to recommend to the Convention the giving of such complete jurisdiction over the matter of rates and of service that the Legislature would be deprived of all power to pass laws either general or special affecting either subject. But it was thought not to be wise to do that for the reason, first, that whatever there is of useful power that has been given over to the commissions by the Legislature is, in its nature, legislative or quasi legislative; that, in almost every single instance, and certainly every class of jurisdiction that has devolved upon the Commission, the Legislature might itself do the thing or provide for its being done in classes. It would not be a wise thing, in my judgment, to endeavor to create two Legislatures, one the Legislature that should have charge of everything of the character of legislation in the State, excepting the rates and service of public service corporations and their issue of securities, and another which should have charge of those particular things. And so the Committee rejected the idea that the Legislature should by the Constitution be divested of a power which it certainly possesses at the present time. But it was thought wise to include a provision that the Legislature should not itself by special statute fix a rate or a standard of service either for corporations generally or for a particular corporation, without communicating with the Commission having jurisdiction and requiring a report from it after it had conducted an investigation at which the interested party, be it corporation or individual, had had an opportunity to be heard and to give evidence and to have it considered. Now, I do not know — I am not gifted with the power to look far enough into the future to determine conclusively, to my own satisfaction, whether or not the proposal in that behalf would result in encouraging the Legislature to leave everything of this kind, in the first instance, to the Commission, and to take

it up only as a last resort; or whether, on the contrary, it would operate the other way, to make the application of a man who wanted a rate reduced, first to the Commission as a matter of form, as something he had got to go through with as a condition precedent to getting at the Legislature, and then to have the real application made to the Legislature upon the pretext that an application of the Public Service Commission was without avail. If this provision found in line 9 — or beginning in line 12 at the foot of page 1 and ending in line 7, at the top of page 2, if the provision which reads as follows, " Except that the legislature shall not enact any law prescribing a rate or charge or a standard of service, equipment or operation for any public utility, until after it has received from one of the commissions a report thereon, made after investigation and hearing, at which interested parties may introduce evidence or until after the expiration of such time following requests for such report as may be prescribed by law " — if that provision is going to result in rate matters being brought more frequently to the attention of the Legislature, than they are now and in making, in effect, the Legislature simply an ordinary, every-day court of appeals from the commissions, then I think it would be unwise. But your committee gave it careful consideration. We had the experience of legislators, several members of the Committee having served in the Legislature — Senator Blauvelt and Senator Foley, in particular, having served there — in connection with these problems it was deemed by those gentlemen a wise and a salutary provision, and if their judgment, which was deferred to by the committee and, I think it fair to say, unanimously, or nearly so, is correct, it would not operate in that manner, but on the other hand would operate to bring the Legislature and the public service commissions into a harmony of relation and into a position of mutual understanding and mutual desire to accomplish the wise thing. If, on the contrary, it should result in a flood of applications to the Legislature, it would be unwise. Since the year 1907 the Legislature has enacted very few laws indeed affecting the rate or the service or the issue of securities of public service corporations. On the whole, they have left the matter to the commission and I believe there are only one or two instances in which matters that properly would be considered as within the jurisdiction of the commission have been finally acted upon by the Legislature in disregard of the commission.

Mr. Wickersham — In order that we may follow the order of business adopted last night in the Convention in voting upon the matter then under discussion, I move that the Committee do now arise, report progress and ask leave to sit again after the disposition of that matter.

The Chairman — You have heard the motion. All those in favor signify by saying Aye, contrary No. The motion is carried and the Committee will now rise.

(The President resumes the chair.)

The President — The Convention will come to order.

Mr. Steinbrink — Mr. President, the Committee of the Whole directs me to report that they have had under consideration General Order No. 38, the special order of the day, that it reports progress and asks leave to sit again after recess.

The President — Do I understand, Mr. Wickersham, that the motion was, after the Judiciary Article had been disposed of?

Mr. Wickersham — No, Mr. President, after the disposition of the special order set for twelve o'clock this morning.

The President — The motion is on granting leave to sit again. All in favor of granting leave to sit again say Aye, contrary No. The ayes have it and the leave is granted. Under the resolution of the Convention the question of agreeing with the report of the Committee of the Whole upon the proposed amendment, general order No. 25, is now the subject matter for consideration.

Mr. Barnes — Last night I was in hope that the Convention would be to-day practically complete, that a vote might be taken upon this matter by a call of ayes and nays. Upon consideration I am not going to ask for a call of the ayes and nays upon this matter for the reason that, when the Committee on Bill of Rights makes its report, this entire matter will again come up for discussion, and I trust at that time that the matured deliberation of the Convention will be more in line with the proposal which was defeated in the Committee of the Whole last evening. A more careful, a more thorough understanding of this question, I think, might possibly lead this Convention, a majority of whom are Republicans by political faith, to realize the situation as I think I see it and, I believe, correctly. Therefore, I will not ask for ayes and nays at this time, but will be content with the usual call, and naturally accept the verdict of the Convention.

Mr. Wickersham — Mr. President, I ask for the ayes and nays.

The President — The ayes and nays are demanded. Is the call seconded?

Mr. M. J. O'Brien — Mr. President, in connection with this subject, I agree with what Mr. Barnes has said. I trust that this motion for the ayes and nays will not prevail. We have had a meeting of the Bill of Rights Committee this morning and there are provisions in that first article which bear directly on this subject, and our report is not before the Convention, and I think that the gentlemen here, the members and delegates, should have the benefit of the report of the Bill of Rights Committee, but, however, I only make it as a suggestion, agreeing as I do with the

request of Mr. Barnes, and I hope the demand for the call of ayes and nays will not prevail.

Mr. Curran — Mr. President, do I understand from the speaker that the Committee on Bill of Rights had a committee meeting this morning?

Mr. M. J. O'Brien — Mr. President, the sub-committee did; the sub-committee to whom was referred the question of putting in form the report of the committee have had a meeting with a view to reporting back to the full committee so that that committee can then report to this Convention.

Mr. Curran — The full committee has not had a meeting?

Mr. M. J. O'Brien — No, the full committee has not had a meeting; it is a sub-committee.

The President — Under the rules when a demand for the ayes and nays is made, it may be seconded by fifteen members of the Convention rising and standing in their places until they are counted. If so seconded, the ayes and noes must be taken; otherwise not. There is a sufficient number up.

The Secretary will call the roll of agreeing to the report of the Committee of the Whole, striking out the enacting clause of the Proposed Amendment, General Order No. 25.

Those who voted in the affirmative were: Messrs. Ahearn, Aiken, F. C. Allen, Angell, Baldwin, Bannister, Barrett, Bayes, Beach, Bell, Bernstein, Brackett, Burkan, Byrne, Clinton, Cobb, Curran, Dahm, Daly, Dennis, Deyo, Dick, Donnelly, Donovan, Dow, Dunlap, Eisner, Endres, Eppig, Fobes, Foley, Franchot, Green, Greff, Griffin, Haffen, Harawitz, Johnson, Jones, Kirk, Landreth, Leary, Leitner, Lincoln, Lindsay, Low, McLean, Mandeville, F. Martin, L. M. Martin, Marshall, C. Nicoll, D. Nicoll, Nixon, J. L. O'Brian, M. J. O'Brien, O'Connor, Parker, Parmenter, Parsons, Pelletreau, S. K. Phillips, Reeves, Rhees, Sanders, M. Saxe, Schurman, Sears, Sharpe, Shipman, Slevin, A. E. Smith, E. N. Smith, R. B. Smith, T. F. Smith, Stanchfield, Standart, Stimson, Tuck, Unger, Van Ness, Wagner, Ward, Waterman, Weed, Westwood, C. J. White, Wickersham, Wiggins, Williams, Winslow, F. L. Young, President.

Those who voted in the negative were: Adams, Austin, Barnes, Berri, Betts, Blauvelt, Bockes, Brenner, Bunce, Buxbaum, Clearwater, Cullinan, Doughty, Dunmore, Dykman, Ford, Hale, Heaton, Hinman, Kirby, Latson, Law, Leggett, Lennox, Linde, McKean, Mathewson, Meigs, Mereness, Nye, Olcott, Potter, Quigg, Ryder, Sargent, J. G. Saxe, Sheehan, Steinbrink, Stowell, Tierney, Vanderlyn, Wadsworth, R. E. Weber, Whipple, C. H. Young.

When Mr. Bernstein's name was called he said: Mr. Chairman, I desire to be excused from voting and briefly state my

reasons. I am opposed to this proposal for the reason that while in terms it purports to be a declaration for equality, its effect, if adopted, would be to work the greatest kinds of inequality. We may not agree as to whether men are or are not born equal, but it does not require a Lincoln to tell us that men do not stay equal. The conditions of birth and surroundings create inequalities. The ravages of time, of age, of disease, create inequalities. Mental defects and understandings create inequalities and lastly an economic condition that has grown up through the centuries has created inequalities. These inequalities are what might be termed natural inequalties, natural to the extent that they are beyond our control; and the mass of legislation that we have come to know as social welfare legislation is the policy that has been adopted not only by this State, but by every modern state and by every civilized nation in order to equalize the condition of inequality that exists through these natural conditions. In other words this mass of legislation, these laws for pensions, for workmen's compensation, health laws, tenement house law, factory laws, have been enacted and are being enacted in order to level, as it were, the handicap under which certain classes and certain peoples naturally suffer. For that reason, Mr. President, it must appear as clear as it can that if you remove the right of the Legislature to enact these laws you are going to establish the natural inequality to such an extent that I fear that it may overburden our entire social system and lead to discontent and finally revolution. For that reason, Mr. President, I oppose this proposal. I desire to withdraw my request and vote Aye.

When Mr. Byrne's name was called he said: Mr. President, I ask to be excused from voting and would briefly state my reasons. If as I listened last night to the splendid address of Judge Clearwater, my mind was for a moment in doubt as to the meaning of that amendment, that doubt was dissipated this morning when I read in the edition of the New York Times a statement over the signature of Mr. Barnes, in which he said, besides criticising the editorial of yesterday or the day before, that the object — I am speaking substantially, now,— that the object of this amendment was to prevent in the future pensions for old or young; sickness insurance, and things of that character. And understanding that to be the meaning of the amendment, I am opposed to it. It has been said by some that this is a progressive amendment. It is said to be an amendment which enunciates the spirit of the age. It does not enunciate the spirit of the age; it is opposed to that spirit which has gradually crept into the hearts of men, that spirit which was enunciated and thundered from Mount Sinai in the first commandment, Thou shalt love thy neighbor as thyself.

That spirit has gradually if imperceptibly been working amongst men and I realize, gentlemen, when I say this thing, that it is not a subject usually discussed. It is not a thought that has laid long in the mind, that is, the principle, that is the principle of that that is in these amendments which give to old people and young pensions. I believe that this spirit is the proper spirit, that the State in these matters is like an organism. It is like a body. When a weak part of the body, either through sickness or injury, is affected, we take care of that portion and the individuals of the State are all members of the body and to these weak members it is our duty to give protection. It is our duty to aid them at that time, not alone for them but for the health of the State itself. I withdraw my request to be excused and vote Aye.

When Mr. Dick's name was called he said: Mr. President, I desire to be excused from voting and shall briefly state my reasons. We may believe in the theory and principle involved in this proposition but embarrassment arises in its application. The Judiciary Committee has reported an article which provides that the Legislature shall enact a civil practice act. If the amendment reported by the Committee on Legislative Powers and the amendment reported by the Judiciary Committee should find places in our Constitution, there would have to be omitted from the civil practice act the privileges and immunities extended by our code of civil procedure to minors, women, lunatics and paupers, because such immunities and privileges would be unconstitutional. For example, Section 458 provides that a person without means who desires to prosecute an action may petition the court for leave to sue as a poor person and if such leave be granted, the court shall assign counsel to represent him without expense to him — a privilege. The plaintiff need not pay any fee to any officer and costs shall not be awarded against him if he be defeated,— immunities extended to him by our code. We will turn now to the criminal law. If an officer in the performance of duty, making an arrest, kills a man, the homicide may be justifiable — a privilege and immunity. Hereafter such privileges and immunities cannot be granted if this proposition be written into our fundamental law. The gentleman from Greene was asked by the gentleman from Tompkins at what particular evil this amendment was aimed, and he stated frankly that he did not know. Now let us aim at something definite. If we believe that preferences under the civil service should not be extended by the Legislature, let us insert in the civil service provision of the Constitution a provision that no further preferences in appointment, promotion or retention shall be created, instead of providing against such creation by a general provision

which, while it might prevent the granting of the preference in civil service, might also prevent the granting of an immunity or privilege in another particular which ought to be granted. Inasmuch as this amendment is aimed at nothing definite, its insertion in the Constitution would amount merely to a declaration of principle on the part of this body. We might just as well adopt a resolution to the effect that we deprecate the growing tendency of individuals and classes to obtain preferences over other individuals and other classes. Mr. President, we cannot by inserting this provision in our Constitution, change the trend of public opinion, however much we may desire to do so. We ought not to be attracted by the proposition to submit this question to the people in the fall of 1917. If that is to be done, let us keep our hands off. Let two successive legislatures pass it and then let it be submitted to the people. Mr. President, for these reasons, I withdraw my request to be excused from voting and desire to be recorded in the affirmative.

When Mr. Donnelly's name was called he said: Mr. President, I am told by the movers of this proposition that it is a plan to create a great state of equality. Those who support the proposition have grown very fatuous about the future. Some of the older men of the Convention have indulged seriously in this. They remind me somewhat of the words of the great poet Horace, when he tells us that "The old men were praising the days when they were boys, doubtful of the future." I believe in the perpetuity of our government. I believe that the present system of government is going to go forward and can meet all the exigencies that arise from time to time. Humanitarian legislation is here to stay and it must stay under the provisions of the Constitution, which provide for equal protection under all of the laws, and that does not mean that we can have universal equality among men. We are told here that all people are made free and equal and much talk is made of equality, but it seems to me that these provisions are going to shackle the people's freedom. I am against this measure, and I withdraw my request to be excused from voting and ask to be recorded in the affirmative.

When Mr. Doughty's name was called he said: Mr. President, I do not wish to be excused from voting, but to explain my vote under the provisions of Rule 7. I believe this question should be postponed until the report of the Bill of Rights Committee comes in.

When Mr. Heaton's name was called he said: Mr. President, I ask to be excused from voting and will briefly state my reasons. Realizing that this question comes nearer the hearts and the minds of the great mass of the people of this State than perhaps any

other question which will be discussed upon this floor, and knowing that for many years people of all classes have had their minds directed to this very question, and believing that they ought to be able to express their views by their votes, I desire to withdraw my request and to vote No.

When Mr. Delancy Nicoll's name was called he said: Mr. President, I ask to be excused from voting and will briefly state my reasons. I should have said nothing upon the subject of this amendment were it not for the fact that I am reported in some of the morning journals as having voted for it. Now, as a matter of fact, I have always been opposed to it and took no part in the discussion because it never seemed to me possible that it would carry in a Convention of sensible men. I am opposed to the amendment because I find nothing in the commission to this Convention which warrants us in any attempt to reconstruct society or to disturb the foundations upon which it rests. Under some other ideal conditions, perhaps on another planet where all men are equal not only in law but in fact, some such experiment as this might be tried, but as long as the inequalities and imperfections of humanity continue, no government could possibly rest upon so rigid and inflexible a doctrine as that which is expressed in this proposal. Therefore, I withdraw my request to be excused and vote Aye.

When Mr. Quigg's name was called he said: Mr. President, I ask to be excused from voting and will briefly say why. Mr. Nicoll remarked a moment ago that he had not heretofore participated in the debate because he could not suppose that in a body of sensible men this matter would have serious consideration. Mr. Wickersham said last night in the debate: "I think there never was placed before any deliberative assembly so foolish, so reactionary, so absurd a measure." Mr. President, when men of informed, really cultivated intellect, of mature minds, such men as Mr. Barnes and Judge Clearwater, on the one hand, are found to differ with such men as Mr. Wickersham and Mr. Nicoll, it seems to me that it ill becomes any of them so to refer to the contentions of another. What is this proposition? That two years from now the people shall be permitted to vote on the question whether or not the Legislature shall pass a bill granting privilege to a class which is not granted equally to all the members of the State. Now, unless by saying that this is absurd, gentlemen simply mean that it is inexpedient, they do wrong to one another. If they mean that it is likely in passing this, in allowing the people to vote on it two years from now, it may be assumed that the Convention commits itself to the proposition, that certainly cannot be true. If we were putting it into this main body of the Constitution to

be voted on this fall, perhaps it might be thought, and justly, that we were recommending it to the people. But when, under Mr. Barnes' proposition, we pass it over for two years so that the people may have that time to think about it and so that we ourselves may think about it, it seems to me that our vote does not carry with it the expression of any opinion whatever on our part other than the feeling that it is a question sufficiently great to permit the people of this State to vote on it two years from now after they have heard what Judge Clearwater thinks and have studied that, and have heard what Mr. Wickersham thinks and have studied that. I believe that the people ought to have that right, and so, sir, I withdraw my request to be excused and I vote No.

When Mr. Shipman's name was called he said: Mr. President, I beg to be excused from voting at the present time and will briefly state my reasons. The very movers of this proposition come before this Convention armed with privilege themselves. By their very entry into this Convention they have a privilege — probably it does not affect them very much — freedom from arrest during this Convention. The second one does affect them. They have freedom from being questioned as to any remark made in the debate during the sessions of this Convention — a most wholesome privilege, which the drastic words of this proposed amendment would effectually cut off. Those two privileges are given to them by the Legislature. Then, again, privileges are enjoyed by the members of this State in various walks of life, which are most wholesome. Take, for instance, the schools where aid is extended to worthy and needy scholars such as was passed a few years ago for privileges in the way of forwarding education, and that grant from time to time, as needed, will be unquestionably cut off. And then the very wording of the amendment is so far-reaching, so drastic, in its short and curt terms, that the Legislature in the case of a national calamity or a time of dire need in this State, would be absolutely cut off from rendering assistance to a particular community or particular persons when relief is most needed and help is most urgently desired, because certain individuals benefited thereby would enjoy a privilege which is not shared by others. Take, for instance, in the case of our national government in the past year. Take the case of the Americans stranded in Europe, American refugees carried from one point to another to be in safety — a situation like that in this State would not be met were this amendment to be enforced. For these reasons and others that I do not wish to take up the time of the Convention with, I beg to withdraw my excuse and vote Aye.

When Mr. Unger's name was called he said: Mr. President, if I were to perform no other duty to my constituents than that

of voting against this bill, I should feel that I had entirely justified their selection of me to represent them here. Every voice raised against this bill is but an echo of society's eternal protest against vice, ignorance and industrial vassalage. Indeed I would be false to every ideal I cherish, I would be disloyal to my belief in the tenets of American government if I voted to incorporate this distrust of representative government into our fundamental law and to forever foreclose my unfortunate and needy brother from that remedial legislation to which he is entitled. I therefore vote Aye.

When Mr. Westwood's name was called he said: Mr. President, I desire to explain my vote, for not exceeding three minutes; and in this connection, I hope I may be pardoned for saying that under rule 7 of our Convention any member may explain his vote for not exceeding three minutes and it is hardly necessary to go through the interesting farce of demanding to be excused from voting. I recognize the distinction between the duty which the individual owes the State and the duty the State owes to individuals. As to the first there should be no exceptions or exemptions. Everyone alike must fulfill his duty to government. But the State which moves with us through representatives, in its own interest, the interest of its peace, of its vigor, of its perpetuation, should be permitted, if it sees fit to differentiate between classes. I therefore vote Aye.

Ayes, 92; Noes, 45.

The President — Report of the Committee of the Whole is agreed to. The Chair will lay before the Convention the report of the Committee on Revision and Engrossment which was temporarily laid aside earlier in the day. The Secretary will restate the report.

The Secretary — Mr. Rodenbeck, from the Committee on Revision and Engrossment, to which was referred the Proposed Constitutional Amendment, Print No. 775, Introductory No. 291, introduced by Mr. R. B. Smith, entitled Proposed Constitutional Amendment. To amend Article III and Section 4 of Article IV of the Constitution in relation to voluntary sessions of the Legislature, reports the same with the following recommendations: Page 1, line 4, after the word "may" strike out the comma, and insert comma after the word "motion" in the same line. Page 1, line 7, after the word "may" strike out the comma and insert a comma after the word "motion" in the same line. Page 1, line 9, strike out the comma after the word "section." Page 2, line 7, strike out the comma after the word "senate."

The President — The question is upon agreeing to the report of the Committee on Revision and Engrossment. All in favor of

agreeing with the report will say Aye, contrary No. The ayes have it and the report is agreed to.

Mr. Wickersham — I move the Convention do now take a recess until half-past two this afternoon. All those in favor say Aye, contrary No. The Ayes have it, and the Convention stands in recess until half-past two.

Whereupon, at 1 P. M., the Convention took a recess until 2:30 P. M., same date.

AFTER RECESS — 2:30 P. M.

The President — The Convention will come to order.

Mr. Westwood — Mr. President, I would like to ask unanimous consent to move to discharge the Committee on Public Utilities from further consideration of Print No. 491, Introductory No. 479, to amend it as indicated on the sheet of paper that I will send to the desk, reprint and recommit.

The President — Is there objection? The Chair hears none and it is so ordered. The Convention will return to Committee of the Whole for the consideration of the special orders of the day, the report of the Committee on Public Utilities. Mr. Steinbrink will resume the Chair.

The Chairman — The Committee will continue its deliberations on Special Order, General Order No. 38, Public Utilities.

Mr. Hale — Gentlemen of the Committee, I believe I have concluded all that I care to call to your attention in regard to the provision that the Legislature may continue to exercise jurisdiction in matters of rates and service, provided it calls upon the commission having the matter in charge for a report.

That leaves as the next thing in order for your consideration the provision in regard to reviewing in the courts the orders and determinations of the commission. It is to be observed, as I have already called to your attention, that these commissions are legislative bodies. In other words they were not devised by the Constitution as a matter of original creation. With the single exception, I believe, of the State of Arizona in its new Constitution — I think I am correct in stating that every commission in the 46 States which now have commissions with the single exception of Arizona, was created originally by the Legislature of the State. The Interstate Commerce Commission was created by Congress. The commission in the Philippine Islands was the creation of the government of the United States in the Islands. So the matter is necessarily legislative. Your committee was asked to make

the orders of the commissions reviewable as a court order would be and to provide for the substitution, really, in place of the legislative review the most complete and broadest judicial review. To my mind, at least, as a member of the committee, that would necessarily be destructive, or, if not destructive, it would very seriously impair the usefulness of the commission through its orders and determinations. There is no instance that has come to my observation since the first day of July, 1907, when the commissions began the exercise of their jurisdiction, that any public service corporation or any individual engaged in public service has not been accorded a court review. All of them, I believe, except such matters as have been taken to the Federal courts in the first instance have been accorded a review under the writ of certiorari. The writ of certiorari that has been appealed to and has been allowed by the courts, is a statutory appeal; and for the reason that the experience on the whole has been as adequate and as complete a remedy in the hands of the public service corporations as they seem to require, I would assume that it is far better to leave a determination of the nature and extent of the review to the Legislature, to be dealt with by it from time to time as its wisdom shall dictate. We have not only got to trust the Legislature with these matters, but we ought to trust the Legislature. The Legislature has had the wisdom, if it were wisdom, and it has had the constancy pretty thoroughly, not without some exceptions, to stand by this method of determining important questions of rates and service, the regular procedure of the commissions, subject to this review. It is quite conceivable that the time may come when the Legislature would deem it wise to extend that review and to make it a broader one. It is equally possible that the Legislature may see fit and may require in order to secure a prompt and adequate dealing with these questions to limit the right of review and in either event justice and an orderly administration of the law shall require that review to be broadened or to be narrowed and it ought in the nature of things as I look at it to be left entirely to the Legislature to be dealt with as it sees fit to do from time to time. In the matter of the removal of commissioners the law as framed in 1907 and as it exists, provides as follows — it is in Section 4 of the Public Service Act: "The Governor may remove any commissioner for inefficiency, neglect of duty or misconduct in office, giving to him a copy of the charges against him and an opportunity of being publicly heard in person or by counsel in his own defense upon not less than ten days' notice. If such commissioner shall be removed the Governor shall file in the office of the Secretary of State a complete statement of all charges made against such commissioner and his findings thereon together with a complete record of the procedure."

Now, your Committee has thought it wise, on the whole, and in view of the fact that a great many or a majority of the useful powers of the commission are legislative, so to speak, quasi legislative, that the Senate which participates in the appointment should also participate in the removal. Public service commissioners, like other appointive State officers, are named by the Governor to the Senate and are either confirmed or rejected by the Senate, and that seems to be more particularly suited to a body like the public service commissioners from the fact that their duties are so largely quasi legislative, and it would seem proper that if a commissioner does not perform his duty in the manner that the spirit as well as the letter of the law requires and his removal is sought for that failure, the Senate, to the extent of a majority vote at least should be brought into participation in the removal. However, the removal is not sought to be made especially difficult. I don't think it ought to be. I think any man appointed to the great office with the very large compensation now fixed to it by statute, ought to be willing not only to devote to it all of his best energies but all of his time and all of his strength. But he ought to be a man who, after a reasonable opportunity at least, would show that he is equal to the discharge of those duties. And if a man by congenital defect or acquired defects or through idleness or contempt for the work of the commission and its demands upon his energies and time, either cannot or will not perform the duties, he ought to be removed. But it would seem to be a proper thing — at least, that is the judgment of your Committee — that he should be removed by the Senate on the recommendation of the Governor, stating the grounds on which such removal is recommended. I am going to send up, Mr. Chairman, a proposed amendment which deals with the next two lines, namely, that the provision in regard to the salaries of the commissioners, lines 14 and 15, shall be omitted from the proposal. I do that for this reason: The present Constitution which is now in force provides in Article V — and this proposal is to amend Article V —" Each of the officers, in this article named "— and of course if this article is amended in accordance with the recommendation of the committee, then the Public Service Commissioners will be named in this article — " Each of the officers in this article named, excepting the Speaker of the Assembly, shall, at stated times during his continuance in office, receive for his services a compensation which shall not be increased or diminished during the term for which he shall have been elected." Of course, that word " elected," I assume, if this is made part of the article, will be extended so as to include an appointed official. But if that is not sufficient to cover it, then Article X, Section 9, certainly will cover it and I assume that

either this general section or some other will find a place in the Constitution. That reads as follows: "No officer whose salary is fixed by the Constitution shall receive any additional compensation. Each of the other State officers named in the Constitution shall, during his continuance in office, receive a compensation to be fixed by law, which shall not be increased or diminished during the term for which he shall have been elected or appointed."

Of course, your committee would not recommend treating the Public Service Commissions on this matter of the increase or decrease of their salaries during the term for which they were appointed upon any different basis than other State officers. So that if you provide in the Constitution that State officers named in the Constitution shall not have their salaries increased or diminished, I haven't any doubt that you will include the Public Service Commissioners. I would not ask for any different treatment in this bill, of course, than is asked for the treatment of any other officers and so I have sent the amendment to the desk to strike out the last two lines dealing with salaries. Now, just a moment in concluding. It seems to me that practically the great reason for including the commissions in the Constitution is to prevent at least the radical legislation which simply destroys existing commissions and creates them over again through some pretext that the existing law is incomplete or imperfect or ought to be amended, when we know that really the purpose of any such legislation is not to change the law but to change the personnel of the officials who are appointed to enforce the law or administer it. I think the history of the Court of Claims, for example, in this State, is a sufficient warning of what may happen if nothing is said about the commissions in the Constitution. The truth about the Court of Claims and the Board of Claims is simply this: When one party is in power we have what is called a Board of Claims with commissioners, and then when the other party gets into power legislation is immediately promoted, advocated, generally adopted, which simply has the effect, not of changing the law, not of changing the great functions of that body, but simply getting rid of the men who happen to be administering the law and getting other men in their places to discharge the duties and to receive the salaries therefor. The Court of Claims was established originally as a board. Then it was changed into a court. Then it was changed into a board. Then it was changed into a court. And I suppose, really, that the object of including the Court of Claims in the Constitution, if it is to be included there, is simply to get rid of the changing from a board to a court, or from a court to a board, when the thing is not a matter of public interest but a matter of so-called temporary interest of the party that happens to be in power. The treatment

accorded to the Highway Commission in this State by the Legislature is another illustration, not of dealing thus with these matters in the public interest, but dealing with them from the standpoint of party advantage. I do not believe there is any party advantage in dealing with a public body that is performing a useful public function. We all recognize that commissioners will come and commissioners will go very largely according to the preponderance of political power, temporary in character. That is one thing. But to abolish and restore wholesale every time there is a change of the temporary majority of the Legislature is quite another thing, and may arise, and I think has arisen, to be an abuse. One other suggestion and I have done. Public service commissions either under that name or the name of railroad commissions or corporation commissions, or something of that character, are now recognized in the Constitutions of thirteen states. There is no State which has held a Constitutional Convention or has had a general referendum in the last ten years that has not included a provision for a commission to deal with these questions which are dealt with in this State by the Public Service Commission. There is no instance in which a referendum has been proposed to include the commission in the Constitution of the State that has been voted down. So that, in addition to having a commission of some kind — and the more recent ones have been modeled either on our own or on the Wisconsin law — in addition to having 46 out of 48 states that have adopted the idea, we have the example of every State having adopted the idea in a constitutional way that has held a Constitutional Convention since 1907. And it has seemed to your committee — and that is our recommendation, therefore — that this Constitution which we hope to frame and to submit to the people, and which, of course, we hope to have adopted, shall include the provision which we have submitted.

Mr. Wickersham — Mr. Chairman, I offer the following resolution — proposed amendment.

The Secretary — By Mr. Wickersham. To amend General Order No. 38. Strike out all after line 3 on page 1, and insert in lieu thereof the following: There shall be one or more public service commissions. The commissioners shall be appointed by the Governor by and with the advice and consent of the Senate, and shall hold office for five years. Until the Legislature shall otherwise provide the existing commissioners are continued with the jurisdiction and powers as at present enjoyed by them. The Governor may remove any commissioner for cause after service upon him of a written statement of the alleged causes and an opportunity to be heard thereon.

Mr. Wickersham — I have suggested that amendment for the consideration of the Committee of the Whole, because while I think that no more useful advance in our government has been made in recent years than the adoption of the system of public service commissions which has now spread over forty-five states, and the removal by the operation of those commissions of the species of lobbies that used to infest our legislative bodies, familiarly known as Black Horse Cavalry, yet I think it may be premature to put into the Constitution a provision that there shall be two commissions, or three commissions, or to tie the hands of the Legislature against meeting through the agency of one or more public service commissions various problems that are arising constantly in the administration of the law affecting the various public utilities. I think, sir, that we would do much better if we confine our proposed amendment to fixing the principle of the Public Service Commission in the Constitution, continuing the present commissions until the Legislature shall otherwise provide, with the same powers and duties they now have and subject to legislative amendment or modification, leaving the Legislature free, if it shall hereafter deem it wise, to take over, if you please, one class of utilities, and put them under one separate commission. Take the question of telegraph and telephones, it may be that all the telegraph and telephone systems of the State should be under one commission, separate from the other. I do not know whether it is wise or not. I only throw that out as a consideration.

Now, the thing that is important is that the commissioners who shall fill these offices shall be of recognized dignity and of recognized permanency of position, and that they shall not be subject to removal except on charges and after an opportunity to be fully heard; and I submit the proposed amendment which I have sent to the desk as a contribution towards the discussion of this subject.

Mr. Westwood — How is the Legislature going about it to reduce the number from two to one; what do they do with the commissioners who are in office and whose term has not expired?

Mr. Wickersham — Well, I suppose the Legislature would have a perfect right to legislate out one of the commissions, and I see no reason why they should not have that power. Suppose we had two or more courts of special jurisdiction, and the Legislature on the advice of those concerned in them should determine that one court could do the work better than two. Now, it can, in its discretion, do one of two things; it may either consolidate the two into one, or legislate one of them out of existence, and if there must be one or more public service commissions constituted with powers for the general purpose for which public service commissions now exist —

Mr. Westwood — Well, Mr. Wickersham, under your proposed amendment, would there be anything to prevent the Legislature from enacting a law in 1917 providing that hereafter there shall be but one commission which shall be composed of five commissioners now in office, whose terms expire on February 1st, 1917, 1918, 1919; in other words, specifically referring to and mentioning five, either Democrat or Republican, I don't care which, commissioners, and legislating the others out of office, exactly what was threatened to be done last spring.

Mr. Wickersham — Well, of course, they could not, under this suggested amendment, continue any commissioners beyond the terms of office for which they have been appointed, because the Constitution must provide they must be appointed by the Governor by and with the advice and consent of the Senate and hold office for five years, and it is not my intention to put both commissions at the mercy of being legislated out of office; there must be one or more commissions. All I have suggested is that I think it is unwise to tie up by the Constitution the hands of the Legislature and the interests of the State by limiting it to two existing commissions. I do not think we have yet come to the point that we can say that it is the matter of final judgment on the part of those who are familiar with the problem, or that we should say for the next 20 years there must be two commissions.

Mr. Westwood — Well, I still do not sense an answer to my query. Let me ask you a little differently. Would you say that in your Proposed Amendment, after a man is sworn in as a commissioner and was vested with his office for five years, he could not be legislated out of office?

Mr. Wickersham — One or another of the commissions might be legislated out, but one member of the commission could not be legislated out. That is my suggestion, that is, if the Legislature should determine that hereafter one commission will suffice, it may legislate the other commission out of existence, and of course, the commissioners are to go with it. Now, I am inclined to think that that is the only way you can do, unless you mean to tie the State up to two commissions. Personally — I am speaking only for myself, not for anyone else — personally, I am inclined to think that it is not good policy to tie the Legislature up to two commissions and that there should be left certainly that freedom of creating one or more commissions to deal with the subject.

Mr. Clinton — Mr. Wickersham, may I ask you a question? Whether in your opinion the expression that "There shall be one or more public service commissions" is sufficiently definite? I recognize the danger of trying to define the powers of the commission, but there is nothing in the law that I know of that furnishes

us with a definition of the term. That is done with reference to the powers of the present commission, but there is no general reference to the powers of the commissioner who may be appointed. I am not asking the question critically.

Mr. Wickersham — I understand. Of course it is not an easy question to answer, because as you say the term " commission " is not a particularly definite one. I want to say that, in making the suggestion, I am not wedded to the form of words. I wrote the amendment here on my desk for the purpose of getting the suggestion before the Committee. We now have two public service commissions.

Mr. Clinton — I am entirely in sympathy with that provision.

Mr. Wickersham — Those commissions are clothed with certain powers; without specifying them we understand in general what they are. They are partially legislative and they are partially executive. Of course, they act in a judicial manner. Under some of the decisions of the Court of Appeals in this State, they act judicially and exercise judicial powers. Of course, that is wholly a violation of the correct legal interpretation of the idea of the commissions. They began as legislative bodies. They exercise by delegation from the Legislature powers which the Legislature might itself have exercised, but could not because of the impossibility of discharging that function together with the other manifold duties put upon it.

Mr. Clinton — The only thought in my mind was whether simply providing that there should be one or more public service commissions would not leave it to the Legislature to create commissions and define powers which, intentionally or not — if I may use the term,— would emasculate commissions.

Mr. Wickersham — I did not catch that.

Mr. Clinton — It would deprive the commission of any efficiency. What I wanted to know was whether it would not be possible in general terms to define the powers of the commission which the Legislature might create?

Mr. Wickersham — Mr. Clinton, I think you would have a more difficult task than I have had to write the amendment defining it. We all know in a general way what their powers are, but an effort to define them for the purpose of the Constitution would, in the first place, be difficult; and, in the second place, you would run into the difficulty I was seeking to avoid, although it is possible it might be stated that such general powers over public utilities, one or more classes of public utilities, similar to those exercised by the present commission — something to that effect might be put in. I think that undoubtedly could be worked out. If this Committee should agree with the general view that it were better not to tie

ourselves up to two commissioners and to leave flexibility in dealing with the general subject while retaining in the Constitution as a fixed point the fact that there must be one or more commissions of this kind, with commissioners protected against merely partisan removal — then the details can be filled in, I think, without any difficulty.

Mr. Clinton — The details should be left to the Legislature.

Mr. Chairman, the question was asked, as the amendment here proposed is a suggestion. The necessity of leaving to the Legislature the determination of whether there shall be one or more commissions will be apparent to any members of this Convention who will consider it. The law is to-day that we have two commissions which territorially, and to some extent by division of duties in the statute, have separate duties to perform. But those duties may, and to a certain extent do, undoubtedly overlap. More than that, I believe the time is coming when the necessity for a division in the first district and a division in the second district will be entirely unnecessary because the conditions which existed at the time of the passage of the original act are rapidly coming to an end in New York city.

Mr. Kirby — I have the honor of being a member of the Committee on Public Utilities and had occasion to make a minority report, not being in accord with my colleagues in the Proposed Amendment suggested by the Committee. I have the greatest respect for the learning and for the ability of the distinguished chairman of the Committee, and it was indeed a pleasure to serve with him when we had the benefit of his wonderful experience and knowledge of the subject of the workings of the Public Service Commissions of the State of New York. But, Mr. Chairman, when the concrete proposition as originally presented to the Convention from the Committee was examined by me, I came to the conclusion that it answered the description of a Tennessee statute relative to a line fence; it was horse-high, hog-tight and bull-strong, as far as sustaining the present commissioners in the tenure of office, their salaries and their powers.

In the discussions in the Committee, when the informal expression of opinion was taken from the various members of the Committee, as to whether or not the office should be made a constitutional body, the various members indicated their views, subject to the right to change, in the light of subsequent events. At that time I stated my opposition, that I thought if it was to be placed into the Constitution as a constitutional body, I was in favor of a concise statement making them constitutional officers and the other details to be omitted and to be left to the Legislature. But since this report has been placed before this body, and since the public

at large have had a chance to scrutinize it and to examine it, it has been subject to some criticism. Some of the leading papers in the State of New York have criticised the proposition, and I will take occasion at this time to call attention to an editorial in the New York *Times,* which reads as follows: "There is no reason on earth why a public service commissionership should be made a constitutional office. There are many reasons against the change. There are far too many constitutional officers, and it is illogical to decrease the number with the one hand while increasing it with the other. Moreover, what is the sense of creating a State department consisting of two commissions with equal and co-ordinate powers distinguished one from the other only by geographical jurisdiction? We are familiar with two-headed, three-headed and five-headed commissions, but a State department with two bodies and no head is something new in our administrative zoology. Some other reason than a consideration for the public interest prompted the introduction of Section 4 of the proposed Article V. It should be struck out." But, Mr. Chairman, if this body, irrespective of the comment, of which the article I have read is typical, is to make these officers constitutional officers, I am perfectly frank to say that I believe as a resident of the second district, upon the question of compensation and salaries, as far as the future is concerned, no such salary should be paid to those officers. Why, gentlemen of the Convention, when you stop to think of the Public Service Commissioners of the second department receiving a greater salary than the Governor of the State, the Chief Executive of the Supreme Court of the United States, the Judges of the Court of Appeals, and the Justices of the Supreme Court in every district in the State except the First and, I think, the Second Department, it is utterly repellent to the people of the district, and the experience of the commission in the past has caused the public to believe in the second district that they are overpaid officials and they do not possess that degree of public favor at the present time so that this body is warranted in continuing them at that outrageous compensation,—greater than the Chief Executive of the State of New York. Now, Mr. Chairman, I realize, and so does every thinker, that the regulation of public utilities by the State has come to stay. That is an elementary proposition accepted by all men. But we know conditions are continually changing. We know that conditions are such that it may be inadvisable to have these bodies in the form suggested by the Committee in the Constitution, so that they could not be changed for the next twenty years, or except by the means of a constitutional amendment. It is extremely doubtful if they should be made constitutional officers. I believe that the sentiment in the second district is against their

being made constitutional officers. I believe that the sentiment in the second district is against paying them these outrageous salaries, and while these men now are enjoying this tenure at $15,000 a year from the people of the State of New York, nevertheless, I believe it to be our duty as representatives of the people to see to it in the future that no such excessive salary shall be paid to the members of that body. Having those views in mind, Mr. Chairman, and it being the principal grounds of my opposition to the adoption of this report, I beg leave to ask leave to submit the following substitute to lines 14 and 15 on page 2 of the proposed report:

The Secretary — By Mr. Kirby, strike out lines 14 and 15, page 2, and insert "the salaries of the Commissioners hereafter appointed shall be fixed by the Legislature and in the second district shall not exceed ten thousand dollars a year."

Mr. Cullinan — Did it appear before your committee what the expenses of maintaining those commissions are yearly?

Mr. Kirby — I cannot answer that question.

Mr. Cullinan — I would like to ask Judge Hale that question, as to the expenses of the maintenance of the two Public Service Commissions of the State.

Mr. Hale — No, I think not, Mr. Cullinan; but I think the information is in the annual report made by the commissions to the Legislature.

Mr. Mereness — Will the delegate yield? I would like to tell Mr. Cullinan that I have just sent a statement of the figures to him from the Comptroller's office.

Mr. Hale — The annual report submitted to the Legislature in January, of this year, contains at the top of page 7, the entire expenses of the commission from its institution in July, 1907, to the present time.

Mr. Griffin — Mr. Chairman, I cannot say that I can find any fault with the proposal to make the Public Service Commissioners Constitutional Officers. In fact, there may be some wisdom in doing so. It may be under our existing Constitution and the Constitution of 1847 that the Legislature has no power to delegate any of its functions, and yet it has been held by the Supreme Court of the United States that the powers delegated to the Public Service Commissions constitute legislative functions. In the case of the Grand Trunk Railway Company against the Indiana Railway Commission, 221 U. S. 400–403, it was held that the order of the Railroad Commission in fixing rates was a legislative act and under its delegated power it had the same force as if made by the Legislature. Judge Hughes of the Supreme Court of the United States in the Minnesota Rate case, 230 U. S. 433, said, "The rate-making

power is a legislative power and necessarily implies a range of legislative expression. We do not sit as a board of revision to substitute our judgment for that of the Legislature or of the commission lawfully constituted by it as to matters within the province of either." It is also held in an early case of the Court of Appeals, State of New York, that the Legislature has no judicial authority and cannot bind the courts by declaratory law. So much the more then may it be held as a corollary that the Legislature has no power to delegate its legislative functions.

Now here we have in the State of New York, Public Service Commissions which exercise judicial as well as legislative functions. If that be the case it might be just as well for us now and here in this Convention to make this body constitutional in structure and in power so as to leave without doubt their acts and in such shape that they cannot be questioned. The importance of the questions which are passed upon by these commissions, the amount involved, the plenary powers given to them all would seem to indicate that we ought to vest them with such recognition that there will never be in the future any danger of their determinations being upset upon the ground of lack of constitutional authority. But I have this objection to the bill proposed by the Committee, that these commissions invested with such plenary powers, should not in my opinion be the creatures of any executive. I think it is wrong to make them appointive. I believe that they should be elective, and for a very good reason. They have powers which are legislative in their nature. It appeals to reason and analogy that the Legislature which vests them with this power ought to have some control over the body which exercises its functions and that the same power in the State which elects the Legislature ought to reserve to itself the power to elect an organization of such tremendous and gigantic influence. For that reason I am going to propose to amend it. First on page 1, line 6, after the word "be" strike out the words "appointed by the Governor by and with the advice and consent of the Senate," and insert the words "elected by the electors of the respective districts at the general election immediately preceding the date of expiration of their several terms." Now, I am by no means wedded to that proposition. In fact, I believe more strongly in the amendment which was proposed by General Wickersham and which was fortified by the statements of Mr. Clinton, except that I believe that that body ought to be elected instead of appointed. I think, perhaps, it is a mistake to freeze into the Constitution now these bodies in their present form. I prefer the form of the Wickersham amendment as to giving the Legislature the right to diminish the size of these commissions or the number of districts where the commissions may

have jurisdiction. I think the Wickersham form as an amendment would be preferable, but I believe that, and I hope that the Convention may apply the same principle with respect to these officers, for I believe that the concensus of opinion of this Convention now stands for their election and that it applies the same as it will to judicial officers. The Public Service Commission, or Commissions now have judicial powers. Is it not absurd to have the Court of Appeals elected and the Supreme Court judges elected and reserve to the Governor, or rather impose upon the Governor a duty and a responsibility so great as that of the appointment of bodies which have, not only judicial power but legislative power as well.

On page 2, my amendment proposes to strike out the words, "The senate on the recommendation of the governor stating the grounds on which removal is recommended," and inserting in place thereof, the following, "Concurrent resolution of both Houses of the Legislature if two-thirds of all the members elected to each House concur thercin," making that section conform to Article VI, Section 11, of the Constitution, which provides for the removal of judges of the Court of Appeals and justices of the Supreme Court.

Now, the section as amended would read, "Any commissioner may be removed by concurrent resolution of both Houses of the Legislature, if two-thirds of all the members elected to each House concur therein." Now, the reason why I advocate that amendment is this: You have, as I said, provided for the appointment of two bodies of gigantic powers wielding tremendous influence. Now, these men are very often appointed, I have heard it said, and there is a general prevailing opinion that it is true — that they have been appointed because they have been agreeable to certain interests in the State. Now, if those powers baneful in their influence are exercised, they have to be exercised through the appointing power, namely: The Governor. Now, how absurd it is to expect that so long as they are the docile tools of the powers to which they owe their appointment, there will be any chance of their removal! Analogy, history, logic and common-sense all dictate that we ought to have a Constitution which is harmonious in all its parts, applying the same philosophy and the same reasoning to each separate section and article. If you vest the Public Service Commissions with this tremendous power, give them judicial powers and then subject them to the same method of removal that you do the judges of the Court of Appeals and the justices of the Supreme Court. It is quite reasonable that the Legislature should have this power of restraint upon a body or bodies which arrogate their functions. The Legislature gives to these bodies legislative

powers; ought not the Legislature to have the right to supervise the fair and just exercise of those powers? Why should not the Legislature have the right to determine whether those powers are properly exercised? It is absurd to think that a Public Service Commission appointed for certain private reasons is going to be disturbed in the tenure of its office by a Governor who has yielded to influences in their appointment. As long as they are docile and obedient, they are going to hold down their jobs to the end of their terms. The only possibility of removal proceedings being instituted by a Governor is perhaps on the change of an administration for partisan purposes, a Governor might then institute removal proceedings. Now, if we are going to treat this subject in a sensible and philosophical way, let us do it harmoniously and according to the rules of analogy, giving to them the powers of the Legislature and the powers of the courts and then subject them to two limitations: First of all, election by the people — make them responsible to the people and not to an instrument; secondly, if they fail to administer their duties properly, permit the body whose functions they usurp and arrogate to initiate proceedings for their removal.

Mr. Chairman, I hand up the amendments I propose.

The Secretary — By Mr. Griffin. Page 1, line 6, strike out the word " appointed " and all of line 7 and insert in place thereof, the following: " elected by the electors of the respective districts at the general election immediately preceding the date of expiration of their several terms." Page 2, line 11, strike out the words " the Senate on the recommendation of the Governor stating the grounds on which such removal is recommended " and insert in place thereof the following: " concurrent resolution of both houses of the legislature if two-thirds of all the members elected to each house concur therewith."

Mr. Clearwater — Of all the propositions before the House, the suggested amendment of the gentleman from New York, Mr. Wickersham, strikes me as being far the most advisable for adoption by the committee and the Convention. I have, however, very grave doubt as to the wisdom of making the public service commissions constitutional bodies. Everybody admits that there must be some supervision of public utilities. It is absolutely imperative in this stage of our civilization that the State and the republic should supervise, to some extent at least, the action of these large public service corporations. It is unnecessary to discuss the Interstate Commerce Commission. If its actions were up for discussion, very much might be said in criticism of its actions. I have long doubted whether the experimental stage of the activities of public service commissions had so far passed that

it was wise to make them constitutional, irremovable bodies. As Mr. Hale, the chairman of the Public Utilities Committee, very well said, their duties are largely quasi-legislative; they are inquisitorial; they are investigative; they are executive and also they are judicial. Never in the history of our civilization have so many diverse and distinctive functions been united in any body as in these public service commissions. I think it very inadvisable, sir, to adopt the proposed amendment submitted by the Committee on Public Utilities, which provides: "The existing public service commissions are continued and the commissioners now in office shall hold their offices until the expiration of their terms. * * * Each commission shall have the jurisdiction, powers and duties it now has, but nothing herein contained shall prevent the Legislature from enacting laws not inconsistent with this section." If this amendment be adopted by the Convention and by the people, it would be entirely beyond the power of the Legislature to deprive the public service commissions of any of the functions which they now possess. As I have stated, and as I think must be apparent to every reasonable man, the exercise of those functions as they are now exercised is experimental and we have not as yet thoroughly tested their advisability and their necessity. If they are to be made a constitutional body or constitutional bodies, the amendment suggested by Mr. Wickersham is far more elastic, far more capable of adjustment to the demands for the necessities or exigencies of the future than is the one suggested by the committee. Mr. Wickersham's amendment says, "There shall be one or more public service commissions." I entirely agree with the gentleman from Erie, Mr. Clinton, and with Mr. Wickersham that there may be very grave doubt whether within the next twenty years we shall need more than one public service commission with these vast, encyclopedic powers that they now possess. Mr. Wickersham suggests that the commissioners shall be appointed by the Governor by and with the advice and consent of the Senate and shall hold office for five years. Here is the wise provision of the Wickersham amendment: "Until the Legislature shall otherwise provide, the existing commissioners are continued with the jurisdiction and powers at present enjoyed by them." Now, if we make them constitutional officers, I suppose that we ought for the time being to continue the powers that they now possess, but I think it will be very hazardous to write into the Constitution beyond the peradventure of change by the Legislature that they shall possess those powers and exercise those functions for the next twenty years, because, mark you, sir, if the provision gets into the Constitution, to be adopted by the people at the coming election, it will never be removed during the twenty years of its probable existence.

The Wickersham amendment would authorize the Legislature, if it came to pass that some of the functions, some of the powers to-day exercised by the Commission — if it were not for the restrictions of parliamentary usage I would say some of those usurped by the Commission — to change, to modify, to meet new conditions — a most important thing in dealing with public service corporations. Why, sir, I am not at all certain but that we are upon the eve of a great change in the motive power which in the future will propel these — furnish power for the operation of these large public service corporations which would require perhaps an entire change of function and of power. It might be difficult to procure, if the recommendation of the committee becomes a constitutional provision. I recommend to the very careful consideration of the delegate, not only the wisdom but the importance of making such constitutional provision as may be adopted flexible and elastic. We are really in a state of flux over all this matter. As Mr. Hale very truly said, only thirteen of the forty-eight States of this Union have public service commissions—

Mr. Wickersham — Oh, no. Mr. Chairman, will the gentleman yield? Twenty-six out of forty-eight, according to the last count. I think I am right, Judge Hale?

Mr. Clearwater — I misunderstood.

Mr. Hale — All States but two. Forty-six States.

Mr. Wickersham — There are commissions in forty-six States, and in twenty-six of them the commissions are appointed by the Governor or by some similar authority.

Mr. Clearwater — Do I understand in the rest they are constitutional bodies?

Mr. Hale — In thirteen they are in the Constitution, but in forty-six they are in the law.

Mr. Clearwater — But they are — in only thirteen States they are constitutional bodies?

Mr. Hale — Yes. I would like to make my answer complete, Mr. Chairman. They are in the Constitution of every State that has had a constitutional convention in the last ten or twelve years.

Mr. Clearwater — So I understand you, sir. All the States in the Union have provisions for amending their Constitutions. Peradventure they see the necessity of making the public service commission a constitutional body. Therefore it is true, as I either stated or intended to state — perhaps owing to the imperfections of my English I did not clearly indicate what I had in my mind — in only thirteen of the States, of the forty-eight States are public service commissions constitutional bodies. I suppose the inference which Judge Hale desires the Convention to draw from the fact that in all of the states which have held constitutional conventions since the organization of public service

commissions, the public service commissions have been made constitutional bodies — I presume he means us to believe or infer or conclude that just as fast as the other States come along with their constitutional conventions, they will make these public service commissions constitutional bodies. That does not follow, either as a legitimate or a speculative conclusion. That is merely the imagination of the advocate, of the optimist. It does not by any necessity follow as a matter of necessity or of reason. Now, as to the amendment of Mr. Kirby, I confess that I have long,— shall I say been disturbed? Let me say perturbed by the fact that these public service commissioners receive a larger compensation than a Justice of the Supreme Court residing outside of the city of New York, Judges of the Court of Appeals, and Governor of the State. Far be it from me, sir, who am an advocate of liberal compensation for services rendered, to say that the compensation is too high, and yet, I am not at all certain that Mr. Kirby is right when he says that it is disproportionate. That, however, is a minor matter, a matter of comparative insignificance. I have no objection to their receiving $15,000 a year, and I think $15,000 a year for the service is not a very large compensation for a competent man in such a field of endeavor for the State. But, I wish again to commend to the careful consideration of the Committee, first, the question whether it is advisable to make them constitutional bodies, and, second, the very great doubt of adopting the amendment reported by the Committee on Public Utilities.

Mr. Blauvelt — Where is there any limitation in the committee's report to increase or diminish the power, duties, or jurisdiction of the commission? You read but a portion of the sentence.

Mr. Clearwater — Well, I only read a portion of the sentence, because in the interest of compression and in my confident belief that every member of the Convention at least can read, if he cannot hear. Let me read it all: "Each commission shall have the jurisdiction, powers and duties it now has, but nothing herein contained shall prevent the legislature from enacting laws not inconsistent with this section." Such jurisdiction, powers and duties, "except that the legislature shall not enact any law prescribing a rate or charge or a standard of service, equipment or operation for any public utility until after it has received from one of the commissions a report thereon made after investigation and hearing, at which interested parties may introduce evidence, until after the expiration of such time following a request for such report as may be prescribed by law."

What I said, Senator Blauvelt, and Mr. Chairman, and what

I repeat, is, that if this amendment were adopted the Legislature could not constitutionally enact any law inconsistent with the exercise of the powers which the act itself could confer upon the public service commission, and what is that power? The jurisdiction, powers and duties which they now have, whereas, the Wickersham amendment contains no such limitation as that. "Until the legislature shall otherwise provide," giving the Legislature ample power absolutely to change the power or duty, and the method and the character of their discharge, of the public service commissions. So that my distinguished friend, Senator Blauvelt, who is such an experienced legislator, can certainly comprehend the distinction between the language of the report of the committee and the language used by Mr. Wickersham in the amendment which he has suggested.

Mr. Quigg — I want to call your attention to a provision of this bill and ask you what you think it means: "Their successors shall be appointed and their terms of office shall be five years, the present commissioners holding office until the expiration of their terms." So that it would appear from the Committee's bill persons can come into office on odd terms. Then the final provision is the salaries of the commissioners shall not be diminished during their respective terms. Do you understand that to mean that if the Legislature should change the salary at any time there might be commissioners serving for fifteen thousand dollars, other commissioners serving at ten thousand dollars and other commissioners serving possibly at five thousand dollars?

Mr. Clearwater — Mr. Quigg, I think at first blush — I never gave it any thought at all until you addressed your question to me — but I should think at first blush that the condition of which you speak might exist. Yes; that is my offhand answer to your question.

Mr. A. E. Smith — Mr. Chairman, one of the delegates asked the question what the cost of the Public Service Commissions was. The appropriations made at the end of the fiscal year, September 30, 1914, the total appropriations made by the State, were $591,720.90, but that does not include the expenses of the New York commission, because under the statute the State only pays the salary of the commissioners in New York and the secretary, and I believe the counsel and the rest of the expenses —

Mr. Wickersham — Does that include the expense of the engineering force in New York in connection with the subways?

Mr. A. E. Smith — No, no; I was just going to get to that. That includes the whole expense of the First District, and the salary of the Secretary and the counsel, and all the rest of the expenses in New York city, that is for the salaries for all of the

employees, the engineering force, rent of offices, printing, everything that enters into the cost of that commission, is paid for by the city of New York and it runs to something over a million and a half dollars a year — almost three times the cost of both commissions to the people of all the State.

However, there was a reason given for that at the time of the enactment of the Public Service Commissions Law which I will get at in a few moments. I believe that as a matter of policy this State is probably committed to the idea that regulation of rates and the fixing of the standard and character of service to be rendered to the people by public service corporations is a matter of State concern, and of State control, and I think further that the people would probably be satisfied to say that that should be exercised by the commissions with a delegation of power from the Legislature. I am not prepared to say that it is the opinion of the people or of a majority, that the double-headed commission should be continued as now organized. In other words, the Constitution should contain no provision that would prevent the Legislature at any future time from reducing that to one commission and taking away from the New York commission the duties which at some future time would not be consistent with the idea of a State Public Service Commission for the regulation of rates, and fixing of standards of service. Now the reason for the Public Service Commission act briefly, was this: In 1905, a resolution passed both Houses of the Legislature creating a commission to inquire into the cost of manufacturing and distributing gas in the city of New York. That commission was organized with Senator Stevens as its chairman. The commission retained the man who was afterwards Governor, Charles E. Hughes, as counsel. It brought in a number of recommendations. Among them was the creation of a commission to hereafter inquire into the cost of manufacture and distribution of gas and electrical energy in all the cities, towns and villages of the State, and it proposed to confer upon that commission broad powers of rate-making. It also brought in a proposal in the light of investigation made into the question, asking the Legislature itself to fix the price of gas in the city of New York at eighty cents, the committee believing that the investigation they made warranted such legislative action. The Legislature, however, created the commission and failed to pass a bill fixing the price of gas at eighty cents. Of course it is needless to say that that created a great deal of dissatisfaction in the city of New York. Then there came up year after year, a persistent demand for the enactment of legislation providing for a uniform rate of fare on the steam railroads of the State at two cents a mile. It was urged when the bill was

introduced in both Houses that the great force behind it was the traveling salesmen, the travelers of the State.

In 1905, there was such widespread dissatisfaction in the city of New York particularly with the Transit Commission, because of what was known at that time above all others as the great bridge crush in the evening (supplemented by the feeling of dissatisfaction the people had at the failure of the Legislature to pass the gas rate), by a very narrow margin, a margin of some twenty-five hundred or twenty-six hundred votes, the people of the city of New York came that close to ratifying a declaration of political principle that called for the optional municipal ownership of all public utilities. Consequently in 1906, there was introduced in the Legislature by Senator Grady in the Senate, and the then minority leader of the Assembly, I believe, Mr. Palmer of Schoharie county, a bill creating a Public Service Commission to do the very things the Commission was afterward given power to do by enactment a year later. That bill failed of enactment and Governor Hughes, when he came into office on January 1, 1907, decided that he would make the one great constructive piece of legislation upon which he was to base his record for the first year, the so-called Public Service Commission act. It was agreed at the time by its friends in this House and in the Senate that it was an experiment. Just how far it would go to relieve the situation complained of throughout the State nobody was prepared to say. While it was drawn with the greatest possible care, while the best minds in the State interested in such legislation gave their best time and their best thought to it, it was, nevertheless, through or right down to a year or two ago, found to be defective in some of its very vital points, which defects have from time to time been cured by the Legislature as rapidly as the courts pointed them out in the bill. Now at the time of the creation of the commission, the reason for the double commission was this: New York city had begun the construction of underground railroads. For a great many years there was a very grave question as to whether that plan was feasible or not. The first subway planned and constructed under the direction of the old Rapid Transit Commission which was a special commission created by act of the Legislature, in which act the names of the commission were contained, proved that it was entirely feasible to tunnel under the rivers and burrow through the city of New York for underground rapid transit. The dissatisfaction that the people found with that was as soon as it had been demonstrated that it could be done there was not speed enough, there was not action enough to satisfy them in the construction of more subways, so that shortly after the first subway was constructed it not

only became very crowded itself, but the population grew so quickly that it failed in its original purpose. It did not relieve the other lines of travel one single bit because the relief was not speedy enough, so that a general system of underground rapid transit was in contemplation. It was agreed that that was purely a city function; but inasmuch as the Public Service Commission Law in its entirety was an experiment, it was deemed advisable to make the double commission one commission, with jurisdiction throughout the rest of the State and one in New York city, and to turn over to the New York city commission not only supervisory power over the public utility corporations as to character of service and rates, but also the construction and financiering of the new and proposed subway routes, so that we find by the recent investigation made by a legislative committee that eighty-five per cent. of the annual expenses of the New York City Public Service Commission is devoted to the construction of new subways, and, from a personal experience, it must be obvious to the delegates in the Convention that eighty-five per cent. of all of the work, probably, and labor performed by that commission, commissioners and subordinates alike, are devoted to the construction of new subways. Now that cannot go on very long. At the end of 1914, one hundred and twenty-five million dollars was spent of the total three hundred and thirty million dollars that it is estimated the whole system will cost and sixty-nine of the eighty-three contracts have been let and are under operation, so that it is safe to say that at the end of another two or three or not longer than five years, eighty-five per cent. of the work and labor of the commission in the first district will be taken away from it because the subways will be completed.

It must be obvious that the regulation as to the rates of public service corporations in the city of New York could not possibly require as many commissioners and as much time as does the rest of the State. We provide now for five commissioners to look into the conditions in every town, city and village in the whole State, where five in New York, after the subways are finished will have to look into but that single section. So that their time now is almost entirely occupied by the work of construction, and on the very face of it it must be apparent that the work of regulation, when there are so few companies to regulate and so few companies to investigate, must be,— it must be very easily seen that that is not as large a duty as the up-State commission would have where they have varying conditions in different cities and different companies operating entirely and wholly apart, and performing a different kind of service for a different locality and for a different people entirely. So that my point is, that if we now fix the Constitution

so that we must have two commissions, it may work a very great injustice to the city of New York, because if we are to continue the regulation of rates and the character of service as a State policy it should be done for the city of New York without cost to the city, just the same as it is done now for Buffalo and Syracuse and Rochester and Utica and Albany and the other cities, without any direct cost to their taxpayers. And it will only be right and proper that that part of the management and control of the subways, which might be called the fiscal business, should be turned over to the city authorities.

Mr. Schurman — Do I understand that with the completion of this construction work the city of New York would pay but 15 per cent. of what it now costs, under the activities of the commission?

Mr. A. E. Smith —About 15 per cent. of its $1,800,000 is to go to the rate making, to investigations, so to speak, yes; and, of course, it will save all these engineering costs.

Mr. Schurman — Because the work will have been completed?

Mr. A. E. Smith — Because the work will have been completed.

Mr. Wickersham — I understood the gentleman's reference to be to the expense of the commission in the first district and about 85 per cent. of the expenses of that commission are devoted to this work of construction, to which the gentleman has referred.

Mr. A. E. Smith — That is right. Now, on page 2, I believe that to be a mistake. It is going to, on its face, look ridiculous to the people of this State,— to say the least about it, it would look ridiculous. In effect it is this: the Legislature is by that prevented from exercising a function that it has the power to delegate to another agency, and makes legislative action dependent upon its own creature before it can operate. Now, I think that is rather ridiculous.

Mr. Wagner — In this proposal it is no longer the delegated power, as I understand it, but hereafter it shall be an independent function of the public service commission, or a concurrent function with the Legislature, to fix rates, because this bill provides that each commission shall have the jurisdiction, powers and duties it now has.

Mr. A. E. Smith — Yes, but the Legislature may at some future time decide to bring under its operations things not now there.

Mr. Wagner — I did not mean to ask that question for the purpose of opposing you, for I am with you, but I wanted to bring out what in your opinion this proposal is doing, in giving absolute power to the public service commissions of fixing rates as a concurrent function with the Legislature. Without interference by the Legislature, or independent of the Legislature.

Mr. Schurman — I wanted to ask Mr. Smith what he referred to on page 2, as I was unable to follow his argument.

Mr. A. E. Smith — Beginning on line 12 of page 1, it says in fixing the jurisdiction and power and duties of the commission: "Except that the Legislature shall not enact any law prescribing a rate or charge or a standard of service, equipment or operation for any public utility until after it has received from one of the commission a report thereon, made after investigation," and so forth.

Mr. Schurman — I thank you.

Mr. A. E. Smith — Now, I see the point of the question by Senator Wagner. I want to go a step further and say that all public service corporations in this State are not now under the public service commissions. The private water companies, for instance, are not supervised by the public service commissions, Now, should the Legislature at any future time decide to give that jurisdiction to the commission, under this proposal they would delegate to the commission the power of regulating the rates of water, something they would not have the power to exercise themselves, after that amendment, without the concurrence of the body which is their own creature and their own agent. Now, another point about it. I believe in the policy of regulation by commission. I think that it is entirely wrong for the Legislature to be passing rate-making bills, because that cannot be done with any degree of knowledge about the subject, unless after long and exhaustive legislative investigations, and that is extremely costly and should be done away with in view of the fact that there is maintained a permanent staff, a permanent organization, to carry this work on continuously through the year and be ready to submit that information to any State body that requires it at any time.

No very great progress in rate fixing has been made by these commissions. Let us have that pretty clear in our minds. The only great benefit that the people can point to as having received from the upstate commission is the reduction of telephone rates, and let us see how that was brought about. That cost the State, independent of its appropriations for salaries and maintenance,— it cost the State a hundred odd thousand dollars, and why? When an attempt was made to pass a bill fixing these rates, a resolution was offered in this House and concurred in by the Senate calling upon the Public Service Commission for the necessary information upon which the Legislature may base its action, and the reply obtained from the Public Service Commission was that its working force was entirely inadequate to supply that information. That did not argue very well for the system; did not argue very

well for commission control, when that commission was itself obliged to admit that they were unable to produce the one great thing for which they were organized, the information, after proper investigation, for action as to rates. There may come a time when the Legislature may for reasons that we are unable to see to-day desire to enact as a matter of law a fixed rate. Now, what do I mean by that? I mean this. In the case of the telephone company no resistance came from the company, but had the company resisted in a review of the Commission's action, they would be allowed to test the reasonableness of that order. The power should be left in the Legislature that where there is no question about that, this branch of the government should have the right to say that is the law of the State, without going to any other body or any other commission but this Legislature, but if the Legislature is entirely satisfied, that it should be enacted, so that the appeal could only be had on the ground that it confiscated their property. Now, of course, by the actual wording of that provision, you can very readily understand — well, I was going to say it was designed; I will take that back; I will say it was not designed — but it will in effect stop all rate regulation by the Legislature. If you want to do that, you might just as well say so and do it, so that the people of the State will understand definitely that it is not the duty of an Assemblyman or a Senator to try to get them cheap railroad fares, or cheaper gas or cheaper electricity. Have it in black and white so that a constituency, wherever it may be in the State, when it meets in caucus or convention, or whatever you care to call it, to nominate Brown or Jones or Smith for Senator or member of the Assembly, they won't pass a resolution that night that the first thing he must do it to get cheaper gas for the taxpayers of some ward or the taxpayers of his city. Put it right in there, and it will be plain and everybody will understand it; but this will have the same effect, because if you read it, it cannot pass any law fixing any rate or prescribing any standard of service until it has received from one of the commissions a report thereon, made after an investigation and hearing at which interested parties may introduce evidence. Now how long do you suppose that will take? Without appropriations, according to the Public Service Commission itself, in the telephone case, twenty-two years.

Mr. Blauvelt — "Or until after the expiration of such time following the request for such report as may be prescribed by law."

Mr. A. E. Smith — How can you prescribe that by law?

Mr. Blauvelt — The Legislature.

Mr. A. E. Smith — Why, you don't believe they will ever pass a bill here that they must do it in thirty days or sixty days?

Mr. Blauvelt — A reasonable time.

Mr. A. E. Smith — A reasonable time? Well, you can't get it over ninety days and have the Legislature in session to deal with the report. That would be all right if we adopted Mr. Hinman's suggestion of monthly sessions of the Legislature, but if the Legislature of 1915 is going to adjourn on the third of May and not coming back any more, what good is all this? What time can you possibly fix that you can say will be a reasonable time, in view of the fact that one of the commissioners himself is on record in reply to a resolution here as saying that with the appropriations they have, it would take 22 years to estimate the actual value of all the property used in the telephone business? I say it does not mean anything. It is an unnecessary hobble on the Legislature. What will be the result of it? The legislator that is ambitious to get cheaper gas for the community that he lives in, cheaper electric light for the community that he lives in, is not only going to have the bill as he now has it, but he will have the resolution calling upon the commission to supply the Legislature immediately with all this information in a time to be prescribed by law.

Mr. F. L. Young — Will you state whether you think it would be undesirable to take the matter entirely away from the Legislature and give it to the Public Service Commission to fix rates?

Mr. A. E. Smith — Well, I suppose you could constitutionally do that, but I do believe that the people of the State would not be entirely satisfied with it because the Public Service Commissions are scarcely representative. I know I can name you a great section of New York that one has not come from yet.

Mr. F. L. Young — My question, Mr. Smith, was to bring out the fact, as I know from my personal experience, that it is practically impossible for a member of the Legislature to figure out what a reasonable rate is.

Mr. A. E. Smith — That is true, but it may be well to leave the power there to enact it if it became apparent that a given rate was reasonable and the public service corporations upon which it was imposed attempted to resist the power of the State through the Commission. There ought to be enough of reserve power and enough of reserve energy held back by a branch of the government to be able to jack up the fellow that resists its agent, just the same as an officer would have the right to call the reserve if a man refuses to submit to arrest when he is clearly in the wrong. This should be the reserve force and the reserve power of the State, vested as it is in that branch of the government to-day, to make it the law of the land so that the man who stands in violation of it, stands not alone in violation of an order from a commission but he raises his arm against the State itself. Whether or not that will be used, I am not prepared to say, but it should be left there.

Mr. Bernstein — Do I understand you would favor a proposition which would leave the power in the Legislature and at the same time give the Legislature the right to delegate that power to the Public Service Commission? Will that cure the defect that you point out?

Mr. A. E. Smith — That is the present condition. That is the situation as it now exists.

Mr. Bernstein — In other words, would you have the Constitution fix the relation in that matter?

Mr. A. E. Smith — No, I would not. I think that is wrong. I do not believe in tying us up or wedding us to any particular plan for any length of time because you never can tell when you will want to change it.

Mr. Reeves — Mr. Chairman and gentlemen: When the Public Service Commissions Law was enacted in 1907, it was undoubtedly an experiment. Since then we have seen the Interstate Commerce Commission growing in power and strength; we have seen the law of reason announced for its regulation; and we have seen these Commissions in New York that were so carefully provided for, the law for which had so much study and has received so much care — we have seen them grow into what I maintain has come to be an acknowledged position which we ought to continue. It is true, of course, as Delegate Smith has said, that when the subways are completed in New York city the Commission in the first district will not have so much work to do. It is altogether possible that the suggestion of Delegate Wickersham, simply providing for one or more commissions to be arranged by the Legislature, may be a better arrangement. I want to suggest, in passing, however, that that provision, if we take it over, should say "one or two" and certainly not give the Legislature the power to go on and speculate and make experiments in this matter and possibly make three or more commissions in the State of New York. Our experience has been that thus far two commissions have worked well and have earned the right to be commended. Now, having done that, they have earned the right to be recognized and fixed permanently in some form in the Constitution. Delegate Griffin has well put it that the right of the Legislature to delegate to the commission judicial powers, the right to delegate any legislative powers may be questioned; and, further than that, we certainly do want this one commission that may be left or this double-headed commission that may be left — we certainly do want it free from party influence, free from political influence. We want it largely judicial in its makeup and safeguarded by our Constitution. We have already made in this Convention a commission of nine gentlemen to take care of the conservation interests of the State. Our Board of

Regents is here to take care of the educational interests. We are providing for a commission of three for the civil service. It is the policy of New York to put these important commissions, with the stupendous work that they have to do, into the Constitution.

Now, I want to emphasize the fact that the Committee on Public Utilities, of which I am a member, gave the most thorough, far-reaching systematic investigation to this whole subject that could possibly be given in the time allowed. The corporations were thoroughly heard; the people were heard; all interests were heard, and, with one or two comparatively unimportant exceptions, the concensus of opinion was that in some form this important commission should be crystallized in the Constitution of the State. In doing it, every effort was made to give elasticity to the commission thus fixed in the Constitution. Therefore it was provided — and this has not been given its proper emphasis and position — that though we put this commission in the Constitution, yet the Legislature should retain the right to change its jurisdictions, its powers and its duties. Now, someone may say that is giving an authority and then taking it back. But we know that no Legislature would be likely to dry up and nullify by its act such a constitutional commission, but if within twenty years the commission of the first district needed more scope or that of the second district less, or vice versa, this power is given to the Legislature to regulate their powers and to regulate their duties, so that the matter can be taken care of, and yet ripper legislation dealing through political influences, turning out an entire commission or interfering with the proper performance of its duties, could not occur.

Mr. Quigg — You speak of the words "changing its jurisdiction." Would you be good enough to say what you understand the Committee meant by "changing" the jurisdiction? Does it merely mean enlargement or subtraction? What does it mean by "changing the jurisdiction?"

Mr. Reeves — It may be found, Mr. Chairman, when the subways are finished in New York, that the jurisdiction in territorial extent of the commission in the first district may want to be enlarged, or we may find that it ought to be decreased as the canals are opened and some other work of large import may come to that city, and it may be the same with regard to the second district.

Mr. Quigg — Does the gentleman think that that possibility or any other ought to justify the use of the words "changing its jurisdiction"? That seems to imply that you might make a supreme court out of it or that you might give it the position of taking care of the peanut business for the licensed vendors on the streets. I would like to know what the word "changing" means.

Mr. Reeves — It was only put in there for the purpose of changing the jurisdiction of a public service commission. I think that a public service commission starting out with the powers and duties and jurisdiction that it now has, with its history and its conditions to-day, will answer the question that Mr. Quigg has asked.

Now the point I wish to emphasize is, recognizing as I have that it may be entirely possible,— and I defer to Delegate Wickersham — to say "one or two" commissions, but, subject to that, we should not let this opportunity go by to put this commission into the Constitution and leave the Legislature the ability thus to fix the boundaries of the respective jurisdictions, of the one or the two, as it is decided to keep them, and, within the purview of a public service commission, to regulate its powers and its duties.

Then, with regard to the point that Delegate Smith made, the provision on page 2 of this amendment that the Legislature shall not fix rates or charges or standards of service, equipment or operation until it has gotten this report from the commission or until after the time fixed by law has elapsed. Now Mr. Smith's own argument answers itself. What we need is a commission with power, as far as we dare to give it, to fix rates, but the committee recognized the fact that the people were not ready and it was probably not best to undertake to say that the Legislature should have the entire rate-fixing power. So the ultimate determination of the rates and charges and matters which are mentioned was left with the Legislature. Now suppose the Legislature is in session and a matter comes before it where something should be attended to, the people are demanding that it shall do it, and it needs simple and quick action, you can inquire from this commission that has the equipment and the ability to make investigation better than any one else in the State. The Legislature may fix the time for this report in a couple of weeks or a month. It will have to come in while the Legislature is sitting. If, on the other hand, it is something that is going to take years, then the Legislature is going to come back again and act on the report. It does not need a monthly sitting of the Legislature to deal with a matter like that. What the committee felt was that after we had made this commission and put it into the Constitution where it deserves to be, two things ought to be reserved with regard to its action: First, let the Legislature itself have the ultimate control, because, in a case where it has said, for example, "Return this report within a month," at the expiration of the month the Legislature can do anything it pleases with regard to the matter that it has submitted to the Commission. Let the Legislature be supreme with regard to those matters. And also with regard to its judicial functions, let us

have a court review as broad and full and complete as the Legislature sees fit to make. Now, I submit that there is a plan that is practicable, workable, and that, in view of the history of the public service commissions of this State, it ought to be carried out. In the committee I concurred in this report and I need not add that I am doing my best to sustain it here. One matter, however, appeared to me to be slightly different and I retained the privilege of presenting that to the Committee of the Whole. These commissioners will continue to have not only legislative powers but very important judicial powers. They have got to be men of the widest and fullest and most complete experience and ability in this very important department. What we want is, as nearly as we can approximate it, men who stand as our supreme court judges stand, with a long enough term of office to enable them to get thoroughly familiar with the work they have to do and then devote long years of successful service to the people of the State.

And I submit, as I did to the committee and a number of the committee took the same view, that five years is not long enough. In this proposed amendment the power of removal of these commissioners was intentionally left quite easy and free from impediments. So that if we get a commissioner who is not fit for the place, it won't be very difficult to get rid of him. Therefore, fix his salary smaller, if you wish, but get a man who is willing to give up a lucrative law practice, for example, and bring the great ability that that law practice illustrates, or exemplifies, to the service of the State, and if you are seeking for such a man, he is not willing to give up that practice, to burn his bridges behind him, to take this position for only five years, and know that at the end of that time he may have to leave it, with practice gone, with all employment gone, and simply the honor of having had this position for five years. You will get better men if you make it for ten years. You will have them longer with the experience that they have for the benefit of the State. You will reserve the ability to remove them quite easily. You will have men with large judicial powers assimilated somewhat as do our judges. It will remove them more out of the political atmosphere, and I submit they will be far better, by doubling the term and making it ten years.

Mr. Quigg — You provide, or this bill provides that the salaries shall not be diminished during each man's respective term.

Mr. Reeves — Mr. Quigg, if I may interrupt you a moment. Judge Hale has already withdrawn that provision and the matter of salaries is left with the general provision of the Constitution, and the Legislature will have the ability to fix the salaries.

Mr. Quigg — I happened to be absent at that moment.

Mr. Reeves — Mr. Chairman, I therefore submit the following amendment.

The Secretary — By Mr. Reeves: On page 1, line 8, strike out the word "five" and in its place insert the word "ten."

Mr. Cullinan — Mr. Chairman and gentlemen of the Convention. I doubt the wisdom of having this body incorporated in the Constitution of this State and I will endeavor to give my reasons. When the subject of rate regulation was in its infancy in this State it took form in the Legislature of this State, in this very room, in a great struggle over what was known as the Hepburn bill, which was a plain pro rata freight bill. It was passed with a large majority and it was supposed that it would be a solution of the evil that then existed. Although at the same time the minority voting upon the Hepburn freight bill made a suggestion and offered a bill for the consideration of the Legislature, that, instead of fixing some rigid rate to meet the cause of the injustice to which I will later refer, we should have a commission with inquisitorial powers and with the duty of recommending to the Legislature of the State what ought to be done to solve the evil claimed to exist.

The Hepburn freight bill remained on the statute books a very short time, because as was obvious, after its early operation, the railroads outside of the State, both in Canada and in the United States, were able to take advantage of the rigid rate in the State of New York, and it was to the prejudice of all of the railroads in the State of New York and not in the interest of the people consequently. Thereafter the Legislature passed, or adopted the act providing for the railroad commission. Now that commission, as I said, was merely of a supervisory order, and to make recommendations to the Legislature of this State as to what should be done. This continued for a number of years, until the work of the Commission, not being entirely satisfactory to the people, it was decided to adopt what was then coming into favor, and now about which there can be no question, the public service commission idea. But notwithstanding there is a general belief throughout this country that they are here and that they have come to stay, we are in a period of transition. The question of transportation is not entirely settled. Now, for instance, if you put this into the Constitution as it is now, what are we going to do with the great question arising in this State with reference to waterborne transportation, in connection with which there may be some evil to cure, and these public utilities commissions under the Constitution may be without power to cure such evil. Those who are interested in our waterborne transportation have appealed to the Legislature lately and within the last two or three years, to make

certain regulations so that this important question in which the State of New York takes such a great and deep interest, the State should not be powerless to accomplish the results that have been at the bottom of the great improvement of the Barge Canal. Now, here is another thought well worth considering. Within the last few years there was adopted by the Legislature of this State a law which was new, and was supported by an element not of itself responsible for matters in connection with railroad transportation of this State. I am not going to discuss the merits or the demerits, and I refer to the full crew bill which has been incorporated in the laws of this State after the labor unions had united in its support. The thought that occurs to me is this: Is that the beginning of some new factor, the movement behind the full crew bill, or is it merely a transitory expression of the labor unions of the State, or of the Legislature in approving of the activities of the labor unions in this respect. Are we going to have a new element injected into the question of railroad transportation in this State? Now, I don't know what the future may have in store.

Mr. Wagner — The Legislature this year which I think no one will contend was controlled by labor unions, as they did not show any strong sympathy for them, had the opportunity to repeal that bill, and they did not.

Mr. Cullinan — Mr. Chairman, I am not discussing the merits or demerits, but I alluded to it as a fact, and as a fact to which we should give the greatest consideration because it is either the forerunner of something more of that kind or it is the end of that kind of activities. But we should not put the public utilities into the Constitution of the State of New York, with its rigidity, and find ourselves obliged within a few years to meet some of these changes that are coming up both in the transportation relative to waterway transportation, and this is full of outside interest, as an active element in railroad transportation in this State. Now, just another question. Looking at page 2, lines 8, 9 and 10, the amendment reads: "Decisions and orders of the commission shall be subject to review by the courts in such manner and to such extent as the Legislature may provide." It seems to me that that language might be improved, for this reason: The present law governing the Court of Claims provides that notwithstanding all of the evidence may be before the court, the members of the court may visit the locality and examine the lands mentioned in the claim before them for adjudication. Now having examined those lands, and having in addition to the evidence submitted by all of the parties, and having made a finding as to the facts, the Appellate Division of the Fourth District of this State has held sub-

stantially that a claim was foreclosed in the matter of review of the facts. And he was greatly prejudiced in his appeal to the Appellate Division, and in talking with the Chief Judge of the Court of Claims of the State, "Why," he said, "there is no necessity for it, but you must go to the Legislature." Now, many of these decisions and orders of the public utilities of the State of New York are of a character approaching that condition of things. That is, it sends out its agents and inspectors to make investigation of an accident and those reports are made and the public utilities board will make its decision based largely upon those reports. Now, it would seem, therefore, that this sentence might be improved in this respect. Now, it says: "Decisions and orders of the commissions shall be subject to review by the courts in such manner and to such extent as the Legislature may provide." Now, while I am always a strong believer in the wisdom of the actions of the Legislature, it would seem to me that all parties who are suitors would be just as well off, if not a little better, if that sentence should be amended by striking out the words after the word "courts," "in such manner and to such extent as the Legislature may provide." That is, so it should read: "Decisions and orders of the commissions shall be subject to review by the courts," without any limitation whatsoever.

Mr. Dunmore — I will not take the time of the Convention long. I desire to offer an amendment somewhat along the line of the amendment offered by the last speaker.

The Secretary — By Mr. Dunmore. On page 2, line 9, strike out the words "and to such extent."

Mr. Dunmore — I am perfectly satisfied with the amendment offered by Mr. Cullinan, if that prevails. But if it does not, then I think this amendment should be granted. I, as a number of my associates who have expressed themselves, am in doubt whether the time has arrived when the Public Service Commissions should be made constitutional bodies, for the reasons that have been heretofore given, and I will not take the time of the gentlemen at this time to further discuss that question. The provision, commencing at line 8 and extending down to and including line 10, on page 2, provides: "Decisions and orders of the commissions shall be subject to review by the courts in such manner and to such extent as the Legislature may provide." That seems to give power to the Legislature to take away absolutely any review of any decision or order made by a Public Service Commission. At the present time an act of the Legislature may be reviewed by the courts if it is unreasonable, and may be held invalid if it is unreasonable. But, under this Proposed Amendment, I take it that power would

be taken away, because the Legislature has given the power to delegate or provide that there shall be no review of any decision or order of a Public Service Commission. That gives them power which does not now exist in the Legislature, and does not now exist in the Public Service Commission, and being a grant of the Constitution itself, it would be a valid taking away of that power of review. It seems to me that that is a very dangerous provision in this amendment, as it now stands, and for that reason I think that either the amendment proposed by Mr. Cullinan or that proposed by myself should be voted by this Convention.

There is another reason why I think the words " and to such extent " should be stricken out. That will give as I have said, the power of the Legislature to take away any right of review of any decision or order of the Public Service Commission. Now, if a man gets into trouble and has a law-suit with his neighbor over a horse trade, it may go to the Court of Appeals; but here is a provision that may take away the right of any public service corporation that exercises jurisdiction over millions of dollars' worth of property, a right to review at all in the court. It seems to me that it is a very unfair proposition. This Convention has taken the position that the Conservation Commission, composed of nine men, cannot be trusted to cut a tree in the forest preserve; they cannot even be trusted to sell a dead tree from the forest preserve. And yet you would give to a commission of five men, three of whom would constitute a majority, power without any review, unlimited, over millions of dollars' worth of property. For these reasons, gentlemen, I think either Mr. Cullinan's amendment or mine should be adopted.

The Chairman — I think Mr. Cullinan's amendment was not read. Will the Clerk read?

The Secretary — On page 2, line 9, beginning with the word " in," strike out all which follows in the sentence and ending with " provide."

Mr. Bernstein — I am inclined to favor the proposal of the Committee to the extent of embodying into our Constitution the existence of the public service commissions. It may be a question of detail as to whether there shall be one commission, two commissions, or more commissions. That is a matter which I believe can be perfected either by the Committee or by this Committee of the Whole. And the reason that I favor the retaining of these commissions in our Constitution is this: The policy of the State and, in fact, of every State of the Union, or forty-six States, as has been stated here, is to have a public body with functions similar to the functions that have been delegated to our public service commissions here, and to the public service commissions of

other States, to fix rates and charges and to fix standards of equipment, etc.

It is becoming the settled policy of this State that these bodies shall exist, just as it has become the settled policy of this State and all other States that there shall be Courts of Claims to determine the claims that may be made against the State. Twenty years, Mr. Chairman, is but a short span in the life of a State or of a nation. We have just entered upon this policy of having public service commissions with defined functions and defined powers, and I can see no reason why a twenty years' trial of the system, by providing for public service commissions, could possibly be objected to. On the other hand, it has the advantage of rigidity which is absolutely necessary in our administrative departments of government. It has the advantage of being fixed for at least twenty years without becoming the football of every Legislature. If you are not going to include this in your Constitution you are simply going to open a way for the Legislatures of succeeding years to legislate these commissions out of business by simply changing their form or their name without at all depriving them of their functions. Now I think that in the interest of good administration this provision should be inserted into the Constitution. But I stop right there, Mr. Chairman, having made these commissions constitutional offices I do not believe that the Legislature ought to be tied down, hand and foot, and I do not believe that the duties and powers and the functions of these commissions should be fixed with such rigidity that they cannot be developed along the lines of the development of thought in the State. I can conceive of situations arising such as Mr. Smith suggested, where by reason of the fact that commissions will not perform their functions or that they won't perform their duties as expeditiously as the people may require that they shall be performed, the Legislature ought to have the final say, ought to have the control of these bodies. Now it seems to me, Mr. Chairman, that since we are committed to the principle of having commissions in our State government, since we are committed to the policy that these commissions shall have certain powers with respect to the fixing of rates and with respect to the maintenance of standards, nevertheless, we ought to be able to trust our legislators, responsible and responsive as they are to the people, to regulate them in some way so as to meet every change in conditions. I therefore desire to offer an amendment which will strike out the provision of this proposal, of the second paragraph of this proposal, and substitute for it the following language: "Each commission" — and I may say as to that, that it is the sense of this Committee that there shall be only one commission — that that language may be

changed to meet the sense of this Committee in that respect — "Each commission shall have such jurisdiction, powers and duties, including the prescribing of such rates or charges or such standards of service, equipment or operation over any public utility as the legislature may provide." Now, Mr. Chairman, under that amendment, if any of your commissions fail to perform their functions properly — and I may say that the failure to perform their functions may be a real danger in the future, because you are going to deprive, as I understand it, the Legislature from having any control, not only over the appointment of your commissions, or in their removal, except upon charges filed by the Governor, and for that reason it may become necessary in the future that the Legislature shall still retain a control over these commissions. Under that amendment if these commissions fail in their duties or fail to perform them as quickly as the people of the State deem that they should be performed, the Legislature could direct, if it so chose, what rates, if any, what standards of operation and maintenance, if any, it felt that the commission should perform. On the other hand, if the people believed that the commissions were performing their duties and were so constituted as to be able to perform their duties properly it could very well provide that they should have, in respect to certain public service corporations, and in respect to certain utilities, full sway in the manner and matter of fixing rates and fixing standards. I offer that amendment, Mr. Chairman.

Mr. Quigg — You are offering that as a substitute for the second paragraph?

Mr. Bernstein— Exactly.

Mr. Quigg — Now if you struck out the second paragraph and did not offer any substitute at all, would it not have precisely the effect, would not the effect be precisely what you want? Would not the Legislature have the power you are trying to confer upon it, without your putting words into the Constitution about it?

Mr. Bernstein — Perhaps that is so; but it had seemed to me that if the powers of the Legislature in respect to the appointment and control of these commissions were also defined in the Constitution it would not only prevent the passage of "ripper" bills, but would also prevent the passage of bills which would deprive the commissions, under whatever name you call them, of some of the functions which it is the intention of the people to place upon them.

Mr. Bayes —As a member of the Committee on Governor and Other State Officers, upon the coming in of the majority report I found it desirable to reserve the right to object to the proposed Article 5, in respect to two or three sections. One of these sec-

tions is Section 4, reading as follows: "There shall be a department of public utilities, consisting of two commissions, of five members each, who shall be appointed by the Governor by and with the advice and consent of the Senate, and may be removed by the Senate upon recommendation by the Governor stating the grounds upon which such removal is recommended. The term of office of the commissioners shall be five years." Now, gentlemen, from what I have heard here this afternoon I am led to believe that the only adequate remedy for this proposed article that is presented to us by the Utilities Committee, is a motion to strike out the enacting clause.

I live in the Borough of Brooklyn, in the 16th Assembly district, a district vitally concerned with the question of transportation and I say to you, gentlemen, that last year in the campaign made by the Assemblyman of our district his issue rested upon the abolition, if you please, of the Public Service Commission, and in a Democratic district he was elected by over five hundred majority. I was astonished at the sentiment of the people in response to the proposal presented to them in respect to the commission. I may say I am not in sympathy with that; I believe in the preservation of these commissions. I believe if they do nothing else than to control the issuance of stocks and bonds, to insure the application of the earnings of these public service corporations to the maintenance of the rolling stock and the preservation of the lives of the passengers — if they do nothing else that would justify their existence and would justify the salaries we pay them. But the reason I hesitate is this: I observe in Section 45 of the Public Service Commissions Law, subdivision 1, that "the commissions and each of them are empowered to administer oaths to witnesses in any part of the State, and to hold hearings and proceedings"— evidently of a judicial character. I observe in Section 2, that "each commission shall have the general supervision of all common carriers," etc., "and shall examine and keep informed as to the general condition of these carriers, and shall inspect the property." Those duties are certainly of an executive or administrative character. I observe in subdivision 3 that "The commission shall have and each commissioner thereof shall have the power to examine all books, contracts, records, documents, etc. and by subpoena *duces tecum* compel the production thereof."— Powers of the highest inquisitorial character. These functions are combined, and Judge Clearwater has said this afternoon that we should hesitate to put into the Constitution a body, call it administrative, executive, judicial, or what you will, heretofore unknown, to exercise such diverse powers and I wish, for myself, that Judge Clearwater had stood firmly against the putting of this proposal

into the Constitution. I inferred he might be led to support the Wickersham amendment. In my opinion we should go further and strike out the enacting clause and leave the Legislature entirely free. Mr. Chairman, one word further. I have never served in the Legislature of this State. I have never had occasion to advocate the passage or the defeat of any particular measure by the Legislature. I sat in the Committee on Governor and Other State Officers rather diligently and I heard a great deal of testimony, and I want to say to you if you are going to take the record of the Legislature as a guide in reference to the Public Service Commissions of this State, they have justified your confidence. We should leave them, leave them at least five or ten years more, leave them to work out these problems. They are doing it very well.

Mr. Mandeville — Up to this time in this Convention I have been listening as have most of the other members of the Convention, to the debates that have gone on, and I have had as a general rule and policy the idea that it was wise for the ordinary member of this Convention to respect the work, the experience and the efforts that have been put out by the Committee having in charge the particular measure. I would much rather remain silent than to speak, because I do not enjoy it, but as a member of this Committee, I think it my duty and my privilege to stand by the report of the Committee. In the first place, because this subject, which is under our attention, concerns and is of the utmost importance to the public of this State, to the capital invested in this State in these utilities, to the laborers who are employed by these utilities, and to the general financial system of this State.

The magnitude of the utility enterprises in this State is not understood by all of us, and I did not understand it, nor I suppose I do not now, except in reading a special bulletin of the bureau of the Census Department of the United States I find that of all the wealth of the United States, one-sixth is invested in public utility enterprises. And in the words of that bulletin it is said: The entire group of the interests has played such a conspicuous part in the financial history of this country for the last twenty-five years. The gross earnings of the electric light corporations have increased over 100 per cent. The steam railroads, 65 per cent. The electric railways 70 per cent. The capital invested in transportation and in inter-communicating companies within the past two years has increased at the rate of six hundred million dollars per year. Utility companies are the largest taxpayers and at the present time more money is invested in public utilities than in any other single class of financial enterprises. Now, during the same time that this increase has taken place, the number of employees

have increased 175 per cent. Their compensation has increased 100 per cent. So that this subject reaches very closely into the affairs of every one of the people of this State. The regulation of public utility enterprises is the only bulwark that we have, the only thing that we have erected against the growing sentiment for municipal ownership which we all know from experience is a disaster to the municipalities which undertake it. The people of the State of New York have invited capital to undertake the management of certain functions for the good of the whole State. The men who have furnished that capital, and they are not one man or one set of men, but that capital comes from the small investor. It is the peculiar field of the ordinary small investor throughout the State to buy public utility bonds, because since 1907 they have been under the supervision of the State, because this industry is peculiarly under their own consideration, they see it, they know something about it, and now the ordinary lawyer who is asked for advice by his client as to how he may get a security which will be reasonable, he is almost limited, under the present conditions, to saying buy some underlying securities of a public utility company that is under the control of the departments that have been created by the State to control them in the interests of all of the State. Now, with the exception of the amendments suggested by General Wickersham, which I think has great merit, that there may be a necessity to abolish one commission, or to change that, I think that the efforts of this committee deserve the careful attention of this Convention, and in so far as may be reserving the right of each to his own judgment upon the matter, I should say that we have the advantage, perhaps, of asking you as seventeen men, sixteen, practically, and practically all agreed upon the important function and the important element of our report.

On our committee were men of such ability and legislative experience as Senator Foley and Senator Blauvelt. On our committee were men who have had experience both down-State and up-State in the matter of utilities. We went carefully over all the suggestions that have been suggested to us and we reached the important conclusion that this was a subject that ought to be put in and recognized in the Constitution that we are now making for submission to the people.

Mr. Wickersham — Unless it interferes unduly, I am going to move now that the committee rise, report progress and ask leave to sit again, in order that the Convention may receive a report. I move that the Committee do now rise, report progress and ask leave to sit again after the recess.

The Chairman — You have heard the motion that the Committee do now rise, report progress and ask leave to sit again. All

those in favor please signify by saying Aye, contrary No. The motion is carried. (The President resumes the Chair.)

The President — The Convention will please come to order.

Mr. Steinbrink — The Committee of the Whole has continued its consideration of General Order No. 38, directed me to report progress and ask leave to sit again after the recess.

The President — The question is on granting leave to sit again. All those in favor say Aye, contrary No. The Ayes have it and the leave is granted.

Mr. Wickersham — Mr. President, I understand that the Committee on Revision and Engrossment has a report to submit. Judge Rodenbeck was here a moment ago and I expect him to be here in a moment.

Mr. Deyo — I ask unanimous consent at this time, that the Committee on Bill of Rights be discharged from further consideration of print No. 394, introductory No. 387, for the purpose of amendment; that that bill be amended as indicated and referred back to the committee.

The President — All in favor of the motion say Aye, contrary No.

Mr. Marshall — Mr. President, I did not hear the motion. I understand that it relates to the Committee on Bill of Rights.

The President — The motion is to discharge the Committee on Bill of Rights from further consideration of a Proposed Amendment for the purpose of amendment and recommittal.

Mr. Marshall — I have no objection to that.

The President — The motion is carried.

Mr. Rodenbeck — Mr. President, I submit the following report from the Committee on Revision and Engrossment.

The Secretary — Mr. Rodenbeck, from the Committee on Revision and Engrossment to which was referred Proposed Constitutional Amendment introduced by the Committee on Legislative Organization, number 741, introductory No. 693, entitled, Proposed Constitutional Amendment, to amend Section 6 of Article III, of the Constitution, in relation to compensation and expenses of members of the Legislature; also, Proposed Constitutional Amendment, introduced by the Committee on State Finances, Revenues and Expenses, No. 784, introductory No. 705, entitled Proposed Constitutional Amendment, to amend Sections 2, 4, 5, 11 and 12 of Article VII of the Constitution, in relation to debts contracted by the State; also, Proposed Constitutional Amendment, introduced by the Committee on Finance, No. 809, introductory No. 709, entitled Proposed Constitutional Amendment, to amend the Constitution by inserting a new article in relation to the budget and to amend Section 21 of Article III of the Con-

stitution, reports the same as having been examined, found correct and correctly engrossed.

The President — The question is on agreeing to the report of the Committee on Revision and Engrossment. All those in favor say Aye, contrary No. The motion is agreed to and the amendments as reported go upon the calendar.

The President — The hour of half past five having arrived, the Convention will stand in recess until half-past eight this evening. Whereupon at 5:30 p. m. the Convention took a recess until 8:30 p. m., the same day.

AFTER RECESS—8:30 P. M.

The President — The Convention will come to order.

Mr. Lincoln — Mr. Chairman, the Committee on Taxation has asked me to make a slight correction in its bill relating to taxation, which was adopted a few days ago, and concerning an amendment proposed by me which was incorporated in the bill. This correction is made to prevent possible confusion, and the chairman of the Committee on Revision informs me that it would be desirable to have this correction made this evening so that the bill may be printed and in the hands of that Committee to-morrow. For that reason I ask unanimous consent to make this motion at this time.

The President — Is there objection? The Chair hears none and the motion is before the Convention.

The Secretary — Mr. Lincoln moves that the Committee on Revision and Engrossment be discharged from further consideration of Proposed Constitutional Amendment No. 806, introductory No. 679, being the new article in relation to taxation, that the same be amended by inserting on page 2, line 15, after the word "town" the following, "except a city," and further that said proposal be recommitted to the Committee on Revision and Engrossment, with instructions to report forthwith as amended.

Mr. Wickersham — A point of order, Mr. President; I want to raise a point of order there, whether or not it is in order to move to discharge the Committee on Revision and Engrossment. It seems to me that is a question of procedure. Reference to the Committee on Revision and Engrossment really is for a clerical purpose and the motion to discharge that Committee is not one of the motions recognized by the rules of this House.

Mr. Lincoln — Mr. President, I understand that has been the practice with relation to proposals, to make merely formal corrections in the Proposed Amendment in the hands of that Committee. That has been done on one or two other occasions.

Mr. M. Saxe — Mr. President, I might say that I conferred with the Committee on Revision and Engrossment in respect to

this matter and there was a little difference of opinion in that Committee as to whether it was a mere change of form or one of substance, and for that reason it was suggested that the motion should be made in Convention. The only purpose of it is to clear up the question of the Lincoln amendment with respect to cities, as cities are now tax districts and there is no necessity for having a referendum in the case of a city and the question might arise if it was passed in this form whether or not the city of New York — because that city happens to contain five counties —would have to have a referendum in order to maintain itself as a tax district as at present constituted.

Mr. Wickersham — Mr. President, I am not at all opposed to accomplishing what the gentleman desires to accomplish, but this is the second, only, of these motions. Some question has been raised as to the admissibility of the motion to discharge the Committee on Revision and Engrossment, which is merely a clerical Committee to examine and report as to the language whether the motion to discharge that Committee for the purpose of changing the measure is properly in order, and as to that I merely submit the question to the Chair.

Mr. M. Saxe — Mr. President, it seems to me that where a matter is of as slight importance as this, it is the simplest way out of the difficulty. Otherwise, it will have to be reprinted as a report by the Committee and then amended on the order of third reading. All of that would be disposed of and the bill perfected by the method proposed. This really is not a change of substance.

Mr. Deyo — If the contention of Delegate Wickersham is correct, then it follows as a necessary consequence that when a bill has gone into a committee of this Convention it is beyond the reach of the Convention itself. Every committee of this Convention is under the control of the Convention itself and any matter which is submitted to any committee may be recalled from that committee by the Convention which created it.

Mr. Brackett — If the gentlemen will keep in mind that the original bill is the only bill that there is, and that, wherever the physical position of that bill is, your motion must be directed to that spot, I think that will clear up the whole situation. I believe this motion is a proper motion.

The President — The Chair is inclined to think that, while there is nothing in the rules specifically on the subject, the presumption always must be in favor of the control of the Convention over its own bills. While there might be objection to an attempt to reverse the action of the Committee of the Whole, provided a matter is within its province, after the report of that Committee had been agreed to by the Convention, the correction of clerical

and verbal errors in the bill which is in the hands of the Committee on Revision would seem to me free from such objection. The Chair therefore rules that the motion is in order.

The question is upon the motion. All in favor of the motion will say Aye, contrary No. The motion is agreed to.

Mr. Rodenbeck — I submit a further report of the Committee on Revision and Engrossment. This report leaves in the hands of the Committee on Revision and Engrossment five bills; two bills of Mr. R. B. Smith which are being held pending action upon another bill now in the Committee of the Whole; the conservation bill, which I understand, is to be amended; the bill reported by the Committee on Suffrage relating to registration, which, I believe, also has been amended, and the tax bill which has been amended to-night.

The Secretary — Mr. Rodenbeck, from the Committee on Revision and Engrossment, to which was referred Proposed Constitutional Amendment, introduced by Mr. R. B. Smith, No. 800, Introductory No. 289, entitled Proposed Constitutional Amendment to amend Section 28, Article III, of the Constitution in relation to the granting or allowing of extra compensation by legislative bodies, or auditing boards, bodies or officers. Also, the Proposed Constitutional Amendment introduced by the Committee on Relations to Indians, No. 799, Introductory No. 707, entitled Proposed Constitutional Amendment to amend Section 15 of Article 1 of the Constitution of the State of New York in relation to Indians. Also, the Proposed Constitutional Amendment introduced by Mr. R. B. Smith, No. 798, introductory No. 291, entitled Proposed Constitutional Amendment, to amend Article 3, and Section 4 of Article 4 of the Constitution, in relation to voluntary sessions of the Legislature and the Assembly; reports the same as examined and found correct and correctly engrossed

The President — The question is upon agreeing to the report of the Committee on Revision and Engrossment. All in favor say Aye, contrary No. The report is agreed to and the bills reported will go on the calendar of third reading. The Chair will state that it thinks that there is a sufficient accumulation of bills on the third reading calendar to make it worth while to have an order of business to-morrow morning on third reading and to have a call of the calendar, and the Chair hopes there will be a full attendance of the members of the Convention, as no bill can be read a third time, or can be passed without having the votes of a majority of all the members of the Convention, which is eighty-five.

Mr. Wickersham — Mr. President, I move the Convention now go into the Committee of the Whole to continue the discussion of the pending order.

Mr. President — The Convention will return to the Committee of the Whole for the discussion of the special order of the day. Will Mr. Steinbrink resume the Chair?

The Chairman — The Committee will continue the consideration of General Order No. 38. Mr. Mandeville had the floor when recess was taken.

Mr. Mandeville — Mr. Chairman, and gentlemen of the Convention: At the point of recess I had called the attention of the members of the Convention to the large amount of capital employed in public utility enterprises in the United States; the percentage of capital employed in the State is larger than in most of the other States, because this State, with the large city of New York, is largely engaged in the sale and in the marketing of public utilities. As I was saying they are, the form of investment in which the ordinary person is most interested. And anything, therefore, gentlemen, that preserves, that insures, or in any degree tends to the protection of these utilities and the securities they issue, is of vital importance, not only to the utilities, not only to the owners of these investments, but to the general enterprise of this State. Public utilities, as a matter of practice, peculiarly require the continued investment of capital. The first investment never stands stable, but as new streets are opened, as new buildings are introduced, a continual flow of capital is required for the proper conduct of these utilities, and for the proper service of the public. Therefore, anything that brings security to the investment aids the public in bringing new capital to these enterprises that require it. Now, I concede that before anything is put into this Constitution, there must be some good reason for it, and the very pertinent inquiry that is usually made by Mr. Delancey Nicoll as to what grievance, as to what wrong this proposes to remedy, and as to whether or no the policy that is embodied in the bill under consideration is a settled policy of the State, should be carefully considered and answered by this committee. Now, first, as to whether this is a settled policy of the State or no, I desire to call your attention briefly to the fact that it has been considered by the court of last resort of this State, and in an opinion written by Mr. Justice Collin, who comes from my city, and of whom we are all proud, he has stated that this law, referring to the Public Service Commissions Law, "was enacted in response to a pronounced and insistent public opinion, and was a radical and important modification of the relations and policy of the people toward the corporations which are its subjects. "Its paramount purpose was to protect and enforce the rights of the public. It made the commissions the guardians of the public by enabling them to prevent the issue of stock and bonds for other than statu-

tory purposes, or any appreciable or unfair excess in the value of the assets securing them, and to prevent also unneeded or extortionate competition indifferent and unaccommodating methods of operation, or oppressive or discriminating charges or rates. It provided for a regulation and control which were intended to prevent on the one hand the evils of an unrestricted rate of competition, and on the other hand the abuses of monopoly. It is the settled policy of the State, rising through an extended and instructive experience to withdraw the unrestricted right of competition between corporations occupying through special consents franchises for the public streets and places and supplying the public with their products or utilities which are well-nigh necessities this policy instigated and is embodied in the Public Service Commissions Law which was adopted in the interests and for the good of the people, and should receive from the courts in activity and in effect in aid of that policy within the fair and reasonable meaning of its provisions." Now, the sole purpose of the regulation, which I think we all, without division of sentiment, to any great extent, admit is required for the proper safe-guarding of the public and of the utilities themselves is the question of fair treatment. The whole policy of the State should proceed upon the question that it should be fair to the utilities, fair to the public, fair to the investors, and fair to the people who are employed by the utilities.

Now, then, I think that the courts, in the fact that when the State of New York undertook this policy, Wisconsin undertook it almost simultaneously, and within the time, seven years, as Judge Hale has said, this policy has extended throughout the United States with the exception of two states, that thirteen of these states, or nearly one-third, have put this into their Constitution, and that each one of these States who have had a Constitutional Convention since the inauguration and adoption of this policy, have included it in the Constitution. These facts, and the well-known sentiments that have been expressed by the different Governors, beginning with Governor Cleveland, Governor Higgins, Governor Hughes, and the general working out of the whole proposition, while not satisfactory in all points, according to my experience up the State, has been very reasonably satisfactory. I have no experience in the City of New York, but, as I take it, the city of New York has been hampered somewhat in the exercise of the functions of this Commission by the fact that the Commission has been overwhelmed with the particular construction problems that they have had in mind. The Committee, in considering the question as to whether there should be two commissions, had in mind the fact of the peculiar problems

that now and always will, in my judgment, surround the particular city of New York, its great size, the great problems that confront it, I believe require a separate commission coming from that district, familiar with its problems. A commission residing in New York I am quite sure would not properly understand the problems up the State, nor would a commission up the State properly understand the problems of New York. But I recognize the great merit and force that was contained in General Wickersham's proposition that we should not tie ourselves to two commissions, and I am quite sure that the Committee would be willing to adopt the question that there should be one or more commissions, as the Legislature may provide. Now, then, if we are right in the fact that it is an established policy of the State, as it has been so declared by our highest court, then the question is what remedy, what evil do we remedy; and upon that I answer that that evil is apparent now that these commissions have been appointed. In the beginning I think they took a higher character than they do now, but I think that character will be restored, will be promoted and advanced, by giving the commissioners the security of a definite term, the security that they will not be legislated out of office and that they need not be subjected to the form of examination that they have recently been subjected to.

In the last Legislature, while an examination of this commission was being conducted, a bill was introduced to do away with the commission and to establish some other commission, to legislate them out of office, and it cannot be said that that bill was introduced by some irresponsible member because it was introduced by the Chairman of the Committee on Utilities that had the investigation in progress. I believe that the regulation of the public service should be free from political bias, it should be free from caprice and from the charge of political sentiment; that the regulation of public utilities should be by an independent body, stable in its office, composed of highly competent men and with the confidence of the public. I do not believe it should be composed of men with an anxious ear for the sentiment of the Legislature. I believe that, rather than following public opinion they should lead it. I believe that if the Interstate Commerce Commission had acted upon the facts as presented to it promptly and given relief to the railroads upon the rates, which they ultimately did give after years of delay, it would occupy a stronger position in the confidence of the public; that instead of waiting to find what the public sentiment was and then handing down a decision, they should have acted upon the facts and handed the decision down and public opinion would have followed them if the decision was based upon facts. That is the only way that rate regulation

and the regulation of public utilities should be conducted. The fixing of a rate is not a matter of sentiment; it is not a matter of what the public desire is. Every man can see that capital invested in public utilities, serving the public, is entitled to an adequate return, not upon franchises, not upon going business, but upon the actual replacement value of the property, and that is the rule that has been laid down by the courts. Upon that money they are entitled to an adequate return and the public are not so dishonest that they would insist upon anything else. Now the only way you can obtain an actual business value of this property is by going at it piece by piece, counting the rails, ties, poles, wires, the equipment, finding what they are worth and the total of that money is entitled to a fair return or else all business is uncertain. Now finding out what that amount is, is a necessary prerequisite of any proper rate making. That does not depend upon popular opinion; it depends upon nothing but a matter of fact. Now the Legislature in 1907 recognized that it was not properly equipped to determine that fact. As Mr. Smith from New York has said — and whatever he says here in this Convention from his experience and ability deserves the confidence of this Convention — he said he was not in favor of having the Legislature fix rates, and it is evident that the Legislature is not equipped, by their own acts — they admitted that they were not equipped and they created a body that was intended to have and should have the men who have the machinery, the experience and the ability to determine that question of fact, not upon sentiment but upon the facts, and fairly to all concerned. That is all that the people of this State want — is a fair consideration of the actual capital invested.

Now the State has invited this capital, it has permitted it to accumulate and the supervision of that is practically administrative; as Judge Clearwater has ably said, it is administrative, it is legislative and it is judicial. The courts have said that in rate-making its functions were quasi-judicial. It has charge of the same situation as the Court of Claims, as has already been pointed out here. I think, with others in this Convention, that we should not go mad upon the subject of putting commissions or other officers into this Constitution, but I do think that, so far as the Court of Claims is concerned, which is a judicial or semi-judicial body; so far as this commission is concerned, which is a semi-judicial, as well as an administrative body, we should dignify the members of this commission by making them impossible of removal by legislative action; and, that, further, if we go to the extent, as I think we should, of elevating the commissioners themselves, of making them removable only upon complaint of the Governor, acted upon by the Senate — if we erect

them in security, we are defeating the very purpose that we seek to obtain if we do not also protect the functions of the commissions. Why should we protect only the men in the commissions if we do not protect its functions as well? And the chief function of the commission is to make rates, based upon facts and not upon sentiment. Therefore, should we simply constitutionalize a body and prevent that body from being removed by the Governor and leave all the functions of the body, all the reasons for its creation, subject to the will, caprice or political bias of the Legislature? And it was with that in view that the committee proceeded and the committee represents, by the way, about as diversified opinions as does the Committee of the Whole, and out of the seventeen men each man had an idea, and the bill is so presented that it will cover, as far as possible, every idea, and it may be said of this bill that it was not the work of any one man. It is not a one-man bill. It is not the bill of the Chairman, although we were deeply indebted to him for his effort and his assistance.

Every man upon the committee, I think, had something to do with the preparation of this bill, but it is almost impossible to suit the ideas of everyone. This committee may debate this matter long and earnestly, and in the end we have got to come together on some proposition in order to meet the public good. Now the committee thought that not only must they protect the commission in order to do away with the menace of legislative or executive interference, but in order to put into our Constitution what has been the settled law of the State by the courts of this State and by the experience of this and other States, the committee felt that it should protect its chief function, the one that is the most important, because if you protect the rate-making power, you protect the question of securities, because securities if they are permitted to be issued only upon the rate-making basis are issued properly. In order to protect that and knowing that the Legislature by its own act had confessed its own inability to make a proper rate we felt that there should be something, some act of this Convention, that would protect the acts and findings of this body. Now, it has been said that we failed to make it elastic. The whole question, the whole matter is here: "Each commission shall have the jurisdiction, powers and duties it now has, but nothing herein contained shall prevent the Legislature from enacting laws not inconsistent with this section, changing such jurisdiction, powers and duties."

Now, it has been inquired what does the word "change" mean? It is the best word that the committee could select to cover alteration, addition, modification, or any other word that only the vocab-

ulary of my friend, Judge Clearwater, could supply, and which meant to cover everything that was necessary to be done to permit the Legislature to have this elastic provision. If we have not accomplished that object, it is not because we did not intend to but because of an unfortunate choice of words, but we have yet to hear of a word which is better. "Change," it seems to me, covers everything that is necessary. Now, it has been pointed out that you cannot make a change inconsistent with this article. This article provides for the form of appointment, form of removal, and the term of office, and I am sure that the Convention would not wish to have any changes that would affect these items. My belief is, from somewhat an extended study and from the benefit of the opinions of the others on the committee, that this is just as flexible, just as subject to change by the Legislature as any amendment that has been suggested here to-night. It would be folly and it does not need argument for it, that we must not erect here a body that is not subject to change. Experience that has taught us in the past must teach us in the future, and I believe these commissions, so erected in this Constitution, are serving a public service, that the Legislature should change them, if necessary, but at the same time, I do not believe any one in this body or any one in the public at large would want these commissions to have any less jurisdiction or any less power than they have now. The principal purpose for their creation is to serve, when they gave them the powers they now have, and in addition to that, they should be given such power as the future may determine. Jurisdiction. A change of jurisdiction would permit the addition of new work upon the New York Commission and any change in any way that is necessary to work out the usefulness of these commissions, but they should not be changed, either in the manner of appointment, the manner of removal, or should not be destroyed and emasculated by legislative act. And so I say that the Committee to the extent of its wisdom selected what would carry out that assertion. Now, then, if we come for a moment, and I shall have done, to the question of the legislative restriction that we have here. It is not a restriction in the extent that it takes away power from the Legislature. It might be termed a legislative handicap; the intervention of a period of time of some sort between the introduction of rate-making bills in the legislative body and the passage of the act, so that it becomes a law. Now, Governor Hughes at the time of his veto of several bills that were passed by the Legislature used some language that is better than anything I can say, and he was peculiarly fitted to discuss this subject, because he, to a large degree, was the instigator of the policy which was adopted by the State and which spread over the United States.

Referring to the bill in question, he said, "the passage of the bill was not preceded by legislative investigation or suitable inquiry under the authority of the state. Nor is the fixing of this rate predicated on reports or statistics officially collated which would permit a fair conclusion as to the justice of its operation with reference to the railroads within its purview. The bill represents the policy, seriously mistaken and pregnant with disaster. It is of the utmost importance that the management of our railroad corporations should be subject to strict supervision by the state and that regulations compelling the observance of the law and proper and adequate service should rigidly be enforced. It is the duty of these corporations to provide transportation of passengers and goods at reasonable rates, and the state should compel the performance of this obligation. It is of the greatest importance not only that railroad corporations should be compelled to respect their public obligations, but also that they should be permitted to operate under conditions which will give a fair return for their service. An arbitrary dislocation of tariffs by the fiat of the legislature without investigation is a matter of serious concern. The best that could be said for such legislation would be that it should be regarded as an isolated case and not as a precedent." I shall not try to read all this matter, because I know that there are others who wish to be heard, but throughout his vetoes he expresses this opinion, and he says, "There is a better way. It has already been pointed out in the legislation of the state. It is practically impossible in view of the nature of the problems and the many questions requiring consideration for the Legislature to deal directly with railroad rates in a satisfactory manner. Where a matter requires investigation in order that a just result may be reached, the obvious course is to create a body which can investigate with expert assistance, as summarily as possible, and which shall have adequate power to make appropriate orders. Such a body has been created in this state through the public service commissions law recently enacted." Now, the Legislature did create such a body. Mr. Smith of New York in his arguments suggested that they created a body and yet did not have the power over their own creation. Now, this body is practically a standing committee of the Legislature so far as this provision on page 2 of the act is concerned; a legislative committee properly equipped and sitting continuously to determine the questions of fact upon which rates must be based. Now, we have not taken away from the Legislature any of the power which it now has. We have suspended it for a moment, until such time as the standing body of this Legislature, created by its own act, can properly ascertain what are the facts upon which a rate should be based. In that interval the press will take up the ques-

tion. The press will know about it, and in the end the decision of the public will be right. We ask for a breathing spell between the introduction of the bill and the passage of the act in which the facts can be ascertained and the public can know what it is doing through its Legislature. Now, they say that it is an invitation, an invitation to a flood of bills to come in here; that it opens the door. No door can stand more wide open than the door as it now stands. As nearly as I can by an examination of the legislative indices, I find that in the year 1908, 39 bills affecting utilities were introduced; in 1909, 74 bills; and so on up to 1915, a total of some 332 bills.

No invitation could be wider than the invitation now extended. If this limitation, or handicap, as we comprehend it, was in force, if a bill came in here as has been described — suppose a man living down in the borough of Queens is paying a dollar for gas and across the street in Kings a man is paying eighty cents for his gas, if he goes out to his constituents and makes a canvass upon the ground that he can get eighty cents for them, he can come in here and introduce all the bills he likes and make all the objections he likes. He does not go to the Constitution to see if there is an invitation to attempt this thing. He comes here anyway, but before the Legislature can pass that bill there must be a joint resolution from the other body created for that purpose. If they can get a joint resolution through these two bodies they are entitled to a report, and if there is any condition of affairs in this State as to rates of public utilities which will not withstand the investigation of the Legislature, of the Senate, and of this body, after evidence has been taken, and a hearing had at which the parties interested may appear, and then it passes both bodies, goes to the Governor and is signed, then I say that such a condition should be remedied, and we acting here for the people should see that it is remedied and that the proper machinery is supplied for it; but I do say that the utilities, that the people who are interested in these things should not be required year after year, day after day, from the time the Legislature is in session until it finally adjourns to keep track of every bill, because of the flood of bills which are introduced without intention of affecting utilities adversely, but in the matter of other legislation. These utilities should be kept free from politics, as well as the courts, as well as the commission. As I say, it should not be necessary that they should be behind these rails, and around this room, when the Legislature is in session. It is not becoming. It destroys the confidence of the public in the Legislature and in the utilities themselves. I speak in behalf of common fairness, that they should be sent to some body and when they appear before that body to give their evidence, make known

their facts, there should be but one place to go, and that place should be free from politics, should be embedded in this Constitution, so far as we can in our prudence do it, and that they having given their facts and made their record, should be then entitled to await the action of the Legislature without trying to appear before legislative bodies and you know, if you have ever served here, how impossible it is for a legislative committee to act justly and wisely; and as it has already been said here by Mr. Smith, that they cannot do it without creating a special committee at a large expense. I think that it has merit. And I further feel that the gentlemen of this Convention if they reflect upon it, as the Committee has done, that they will see that it is not robbing the Legislature of any of its power; in taking the power away from the Legislature or the right to control these commissions, they have not lessened the opportunity for relief if the commission becomes slothful or neglects its duties. They have a right to call upon this commission, and if by a given time, fixed by law, they can fix the law, the commission does not respond, they can, without the report, see that the public is protected, but there is provided an interval of reflection, a period of sound understanding before the Legislature acts, to insure to utilities, not for the benefit of the utilities alone, but for the benefit of the State and for the benefit of the money invested, a public investigation. I think, gentlemen, that I have stated all that I should state. I expect, possibly, in regard to the judicial review, and as to that a difference of opinion arose in the Committee which was settled by the statement that " to the manner and to the extent fixed by the Legislature the decisions and orders of this commission should be reviewed." Whatever may be my opinions upon that,—

Mr. Cullinan — If you will recall I submitted an amendment to the effect that decisions and orders of the commission should be subject to review by the court. If that is adopted and that section be stopped there, then, if this should become a law a review would automatically arise. Now, why do you put in the language " in such manner and to such extent as the Legislature may provide " ?

Mr. Mandeville — That will remain at it is, Mr. Cullinan. The reason that language went in there is because it was the language adopted as the best view of the Committee, and I am bound by the Committee's report to sustain it in every respect. As to this judicial review I can recognize a broad difference of opinion, and as to whether or not the courts should be permitted to substitute their judgment as to facts for the judgment of the commission, and as to the other questions involved I imagine there would be a difference of opinion here. All I can say for the Committee is that our desire is to accomplish some good, to get into this Consti-

tution something that satisfies the general concensus of opinion and I welcome the discussion that has been had and which will follow, and the amendments which are suggested and I think if this bill could retain its place on the calendar that, with these amendments before us, perhaps we can get something that will approach the general desire of this Committee and of the Convention. I earnestly hope so, because I think there is here a problem which deserves the attention and the action of this Convention.

Mr. Olcott — Like so many others of the Committee, I was one of those who introduced a bill on this subject before the Convention, which, of course, was referred to the Public Utilities Committee. It was a carefully born and nurtured child, but as it comes back on the floor of the House it is hardly recognizable as my own, so if I say kind things about this bill reported by the Committee I won't be accused of grossly flattering my own posterity. As several speakers have stated, every one of the seventeen members of the committee, if not as many different bills, certainly many times that many different ideas developed in the committee; and I will say in passing what you must all be aware of, because Judge Hale was upon the committee, a man of extraordinary care and learning, especially in this direction, that each one of the propositions and each idea of each member of that committee and each member of the Convention, so far as known to them, was discussed with not only great care and attention, but with extraordinary powers of and opportunity for investigation, because we held a great many public hearings. They were all largely and well attended, not only in numbers but in the quality of the speakers. We had the advantage of long dissertations on the subject, and especially on their experience, from, I think, nearly all of the Public Service Commissioners who have served this State; if not nearly all, I should think safely a majority of them. The chairman of both of the present commissions were before us at great length and with great courtesy and gave us valuable data from their experience and their own offices which were carefully considered. Many of the other commissioners, both past as well as present, were before us. Their immediate predecessors as chairman, as Senator Blauvelt has reminded me, were present, from whom we learned perhaps quite as much as from the present commissioners because they saw the acts of others and the tendency of legislation and plans with perhaps better perspective than those in the midst of the work now.

Now, I am only saying these things and not meaning to take so much time in addressing myself to this feature of the matter, to say that if there rests any doubt, when he comes to vote, in the mind of any member of this Convention as to the fact that he can place

some reliance in making up his mind upon the concrete and aggregate judgment of the committee, he may safely discard that doubt. I want now to discuss for a moment the parallels and the divergencies between the bill reported by the committee and that measure offered by our distinguished leader to-day on the floor of this committee. In the first place he provides that there shall be one or more public service commissions, and our proposition is explicit in stating that there shall be two. What I say on that subject may not be important because you may say that, if what I am about to say about the absolute necessity for the continuance of the two commissions is true, the Legislature in its wisdom will so discover and continue to legislate in that way, or at least not legislate to the contrary. Maybe that is so, but it seemed so clear to us, on the testimony of every one I have spoken of, as well as our own judgment — our own judgment being informed and drawn almost exclusively from the testimony on all sides of this proposition from every person that came before us — that there should be for the next twenty years two commissions, that we had no manner of doubt that it was safe to recommend that for the Convention to adopt. It has been stated correctly that a very large part of the business of the First District commission is with relation to the subways in New York city. You have heard from Mr. Smith that 85 per cent. of these expenditures are with regard to the engineering and architectural and very practical as well as study work relating to the subways. Mr. Smith — I did not catch that he prophesied how soon that would be finished, whether he named a definite year or not, but I humbly ask to be authority for the proposition that not in 20 years will the subway work in New York city be finished. I know that the debt limit has been reached, or nearly, for the allowance of that huge expenditure at present, but I know that before the present proposition is done it is beyond a doubt that there will be extensions of the system. In fact New York city is growing. As one speaker has said, not only up to the establishment of the subways now existent and in sight but far and far so far ahead of it that whereas the computation was made that when we got such and such a subway there would be people to fill it, the fact is that with the opening of each new subway the experience has been, as with all rapid transit in New York city, that the march of population was far greater than the march of accommodation, and outlying districts have been built in Queens county, for example, which are going to more than tax the very vast rapid transit improvements to carry the people in that direction, so that in our outlying districts, as well as in Manhattan Island, the truth is as I have stated, and I have no doubt ways and means will be provided for the extension of subway conditions far beyond the lifetime of the work of this Convention,

long as it is. If it were not so this great work for the First District, in addition to that of the building of the subway, besides that and in order to provide against any possible paucity of work for the First District commission, there was put into our bill — and I think that we are indebted to Delegate Coles from Suffolk county, I think — yes, Suffolk county — a proposition by which the jurisdiction, territorial and topographical, of the two district commission bodies might be changed and shifted, the one increased and the other lessened. Mr. Coles' proposition, influencing me to vote for it, was that it was normal and natural for Long Island to be part of the First District, because he pointed out the anomaly or solecism that although it was part of the Second District you could not get from it to any other part of the Second District without traversing the First District, unless you go outside the State, or by water, and that it was abnormal that that thing should be.

Well, the Second District may be relieved if the New York city commission is ever relieved of its tremendous stress of work at present by additions to the First District and subtractions from the Second District. All Suffolk county, which is looming in importance, is demanding continued and increased service, not only in means of transportation, but of the other public utilities. The work is vast of those commissions. I do not believe that anyone not intimate with the work of the First District commissioners knows their great length of hours and their great time of occupation. I personally, of course, know less of the Second District than I do of the first, but I can bear testimony, which is well known to you all who have had business with that office, that they are very much over-taxed indeed, at present, and I believe the march of progress throughout the Empire State will always keep both districts over-taxed, so I do not regard it as possible that there will be within 20 years any time when the shortening of these commissions into one, when the aggregation of these two commissions into one, or when the lessening in the number of commissions would be feasible. I think it safe to say, and the testimony would be convincing to all of you if you had heard it, that there would be no time in the life of this amendment to the Constitution when it would be likely that there would be any need for either a less number of commissions or a less number of commissioners in —

Mr. Brackett — Is it either likely that in 20 years there would be need for three commissions or more, by reason of the tremendous increase of work that is likely to come? Isn't it for that reason desirable not to tie to any specific number?

Mr. Olcott — My judgment would be, Mr. Brackett, in spite of all I have said, I believe that with the lessening of rapid transit work in the First District and their ability to attend to other

details of their work for a longer proportion or part of their time than now, that the matter could go along for 20 years without a third commission. But if anyone thinks, Senator Brackett,— I was trying to say to you, Senator Brackett, in answer to your question, that I am quite satisfied, if you think there is a chance of that, to have the proposition changed so that there shall be two or more commissions; but I dislike the proposition as suggested by Mr. Wickersham that there should be "one or more," as inviting the Legislature in some spirit of economy which might run beyond its proper bounds, to shorten the number into one. The method of appointment which Mr. Wickersham suggests is the same which the Committee suggests, and in my parallelizing of these two commissions — I need not spend time on that — we have the same appointment made by the Governor, by and with the advice of the Senate. The method of removal which Mr. Wickersham proposes is the present method applied to the commission, which is simply by the Governor's judgment and discretion. It is very honest — after a hearing and upon charges served — and yet I think we all know that it practically comes to the judgment of the Governor alone, the matter of removal. I would say, whether that be the correct theory of that or not I would none the less be unshaken in my belief that the Public Utilities Committee of this body has named the righter and the juster method if the commissioners are appointed as we suppose they shall be and as they are now by the Governor, by and with the consent of the Senate; then I believe their method of removal should be substantially the same, by the Senate on recommendation of the Governor, which as I read it means the same thing — so I prefer the suggestion of the Committee in that regard. The five-year term of which I shall speak in a moment, is agreed to by both propositions, and until the Legislature shall otherwise provide, as General Wickersham says, the existing commissions are continued with the jurisdiction and powers at present enjoyed by them, and there is not very substantial difference between that and the Committee's proposition except as the Committee definitizes. And now I want to speak for a moment of the definite propositions that the Committee submits for the vote of this Committee of the Whole. And first I addressed myself, because perhaps it is the more important matter criticized to-day, to the criticisms of ex-Speaker Smith, of the language contained in the first line and the fourth of the second page of the bill as reported by the Committee, that "The Legislature shall not enact any law prescribing a rule or charge or a standard of service, equipment or operation for any public utility, until after it has received from one of the commissions a report thereon made after investigation and hearing." Now, that differs

from Mr. Wickersham's in that he has no such specification. As I originally introduced my bill, and I think there were others, I am not sure, that proposed the same thing as mine, but it embraced the proposition for the largest and most exclusive powers in these regards by the commission and for the broadest court review. It seemed to me that these two things might well go hand in hand, for exclusive rate making and equipment-making power by the Legislature.

Mr. Wickersham — When you speak of proposed court review, you mean review by the court of the action of the Commission in passing upon disputed questions of fact as well as of questions of law?

Mr. Olcott — I do, sir. I am speaking of my thought, and not of the Committee's. I was about to say how it had been modified.

Mr. Wickersham — I see. When I said yours, I meant the Committee's.

Mr. Olcott — No, I was speaking for a moment of my original proposition, and then I was proposing to trace down how the Committee had caused me to change and compromise, and while my mental processes, I know, are not interesting to the Committee, it illustrated the point I was about to make. My proposition provided for the most exclusive power of the commission, and then the broadest review to hold it in check. I felt that the Legislature had delegated this power and that it should not be a delegation with a string attached; that if the Legislature had seen fit for the past seven years and if the Constitutional Convention should see fit for the next twenty years to constitute and continue this commission, we should give it the great powers for which it had been formed. And then along came suggestions from people who sympathized initially, as I had not in my own thoughts done, with the idea of continuing the powers in those directions, and they pointed out that the Legislature had not intended when they formed this commission to create a Frankenstein that would grow big enough to overpower them and rob them of their puissance but had intended to create an orderly child that should be admonished and have its propositions and actions moderated by the Legislature when the Legislature saw fit. That idea seemed to me to have much, if not all, of the merit that its proponents suggested for it. Then the argument was made by some of us that the fear was that at some time — not the Legislature in its present wisdom because we had with us on that Committee such members of the Legislature as Senator Foley and Senator Blauvelt and several past members — I am not sure whether there were any more members of the present house — and we knew that under their guidance in this matter of particular interest to them, the Legislature was safe.

But we said: "There may come a time when through the old impulse of 'strike' legislation, if such a thing were possible any more,"— and I hope it may not be, but viewing the possibility as there,—" or through uninformed action, or action by members of the Legislature who might introduce a bill because they were chafed or irritated by something and perhaps had their minds distorted"— it might be among the possibilities that the Legislature would act quickly and make a rate, let us say, on the demand of their constituents for a 75 cent gas bill or the demand from their constituents in Brooklyn for a five-cent continuous fare to Coney Island, or some of those other things — that the pulse of the legislator, especially the Assemblyman to be elected every year, if he continue to be, throbs too easily, and we said "Let us try to do something that will avoid that possibility."

We know that rate-making and other regulations entered upon by the Legislature, or thought to be entered upon ill-advisedly, have been vetoed by Governors in the past and we know that that may always continue to be the action. And yet even that may possibly not continue. There might possibly be a Governor who might have his mind, as more tempered thoughts might view it, distorted by some popular clamor and demand and we might get some really unfair legislation, which it would take years perhaps for the courts to finally declare to be out of the way and unconstitutional and which the public interests should be guarded against. Then came the scheme that was put in here as a compromise, to which I gladly assented and for which I as earnestly plead as if I had been the author of it, and that is that the Legislature shall retain its power in those respects, to this modified extent, that it has this necessary prefatory action that they shall first ask the commission to lay the proposition before them before they reduce a rate or make some dubious requirement in equipment. We made that provision for two reasons: First, the safeguarding of the public and proper regard for its creatures, the utility people; and, secondly, because, confessedly, as we have heard in this chamber,— again I quote ex-Speaker Smith, — the rate-making power is not something that the Legislature is equipped to analyze and find out about. So we said the facilities of the commission shall be at the beck and call of the Legislature, so that it may require and call for them to give information in a reasonable time, and make returns to the questions asked before the Legislature shall do this rate-making. And Mr. Smith says, quite naturally — and I think there is an equally natural and perfectly positive answer —" Why, what can we do? If you make it as soon as thirty days, or sixty days, or certainly if you had to

make it ninety days, there would not be any time for the Legislature to act after getting back the report." Well, there should not be. That, of course, is the obvious answer. If the equipped commission cannot ascertain the facts upon which you should determine such a great question as, for instance, whether the gas companies should reduce the price of gas from 80 cents to 75 cents in New York city — if that cannot be determined by an equipped commission within ninety days, then, of course, it goes without saying that the Legislature should not rush to provide an unauthorized and ill-considered relief of the public, upon any demands, however insistent, by any constituencies. In such a case as that the answer would be, let them require that the commission, — if they are sure that the commission is giving them an answer or endeavoring to give it as quickly as these rate investigations can be had — let them give it to them by the next session, if it cannot be done before, or by Christmas day of that year so that they can act upon it at the next session and they will then take their action in time to provide the relief for their constituents that is asked. And if, on the other hand, it is a matter that can be determined in a short time, do you think, gentlemen, that I use large figures when I speak of questions that cannot be determined by an equipped commission within ninety days? Why you would not if you heard the testimony — not from interested utility people — but from the hard working, exceedingly expert commissioners, such as Commissioner Stevens, formerly of this district; Commissioner Van Santvoord, now of this district; Commissioner McCall of the first district; Commissioner Wilcox, former chairman on the first district — men whose statements on the subject you know were true because you know and we all know that they are good, faithful, efficient, hard-working public servants, some of the clamor of recent days and recent investigating committees to the contrary notwithstanding. When you heard them say that there were questions about values, questions about the value of their pipes in the ground and what proportion that present value upon which capitalization was predicated should bear to the original cost of the pipe and the laying of it; when you heard about the engineering difficulties in the way of making a fair appraisement of capitalization for the purpose of seeing whether an 80 cent rate for gas would be proper or confiscatory, you would know that there are many cases as to which my suggestion that ninety days would not be too short a time, is well borne out, and borne out by evidence that none can dispute.

So I say, if it is a long question like that, it should go to the next Legislature; and if it be a small matter, either in scope or in history or in analysis, then your commission is going to give

you a quick answer and your present day Legislature can act immediately. If it does not, it is going to be perfectly apparent that they are acting against instead of hand in hand with the interests of their original creator, the Legislature, and their creator, the people, and legislation by the Legislature under such circumstances, particularly if the time limit had expired, would meet the approval of the Governor and of all men. And so it seemed to us, here was a proposition that properly conserved the duty and responsibility and the proper power of the Legislature over its creature, this public utilities commission, and yet properly conserved the interest of the public utilities people, and through them, the people of the whole State in the matter of convenience, requirement and necessity — because their interests, like those of the people and the Legislature, should go hand in hand — then, I say, you have a situation where the interests of both sides, the law-making power on the one hand, the utilities people on the other, are properly conserved, without hitting anybody in the face; without attempting to derogate from or reduce the proper power of the Legislature; without, on the other hand, refusing for a minute to have the usefulness of the utilities commission in informing the Legislature, which is the people of the State, of the true facts. Now, what can be more just and more proper than that? It requires no such legislation as may be safe for the Utopia, but legislation which is safe for the ordinary forms of government, under ordinary human conditions, because it prescribes what no other scheme that has been suggested on that point, that I know of, including my own, prescribes — the checks and balances which our government is supposed to have prospered under and which, God grant, shall never be removed. Now, so much for that point. Next we come to the point where the Committee reports this paragraph for your consideration: "Decisions and orders of the commissions shall be subject to review by the courts in such manner and to such extent as the legislature may provide." That is leaving it where it is at present, without, however, a power in the Legislature to increase or circumscribe it. And you see, when we had deserted my original idea — and I beg you to believe I am not meaning to appear egotistical, but only, as I said to General Wickersham, to illustrate the processes of my mind in its formative period, which may be of use to some of the members of the committee that have not until now given much thought to this — I say when you got my proposition trimmed into shape so that the commission did not have arbitrary authority, but had its checks and balances residing in the Legislature, then it was conceived by the Committee that there was not so much need for the check which I had in my imperfect thoughts arranged for it, the check of the courts

on questions of fact. "Why," said Judge Hale,— I don't dare to quote him because I could not do justice to the way it impressed my mind —" you have your check and your balance in the work jointly of the commission and the Legislature on this question of fact. Then why leave it to a court as to a question of fact to be determined? Why make it imperative, at least, that it should be so left when a court has not been there, when the court has not given the ninety days or the longer or shorter time for the consideration of this great question of intricate fact, why leave it to the court to subvert the legislative power which has then been acted upon jointly and soberly and magnificently, as we shall hope and suppose, by the combined forces of the Legislature on the one hand, and its highly educated child, the Commission, on the other? Why leave it to a court who has to judge in a few hours or a few days or a few weeks what took these two great legislative authorities months to determine the right of?"

And with all my predilections for the final and great authority of the great courts of our State, with their reluctance, which I think Judge Hale is smiling at, as he sees me now a complete convert to his theory, after shilly-shallying on my part, which he remembers, I am just as confident as he is that I was wrong and he right in leaving this question of the extent of review to be fixed by the Legislature. It was being always borne upon my mind by testimony and present and recent past history that the Legislature could be trusted on all these points, that the Legislature had not made a move that had not been with salutary effect upon this proposition and upon the well-being of the people under it.

Mr. Schurman — I should like to ask Judge Olcott what is now gained, in view of his very interesting exposition in this exchange of views, and of the wording of the paragraph, by retaining at all the paragraph providing court review?

Mr. Olcott — On that subject, and since you appeal to my present thought, I don't know that the elision of this paragraph would substantially alter the measure. I do not want to be disloyal to the committee's compromise measure in saying that, but you have appealed to my direct mind on the subject, and I say it seems to me the scheme is safe with or without it, but if there is going to be need of the subject, this is a safe scheme. Does that answer your suggestion, Doctor? Mr. Smith wanted to say, and it is really but an accompaniment of my general remarks on the subject — he spoke of the fact that Assembly District Conventions and grocery stores at the cross-roads, and what not, when they nominated a man for the Assembly, adopted a resolution sometimes that he was to vote for 75-cent gas. Well, of course, if you can get away from that sort of thing, not only will the

people be better served, but their Legislator will be happier. If you can remove from the evanescent or, at least, perennial — or I should say annually elected Legislator, the pressure of that sort which proceeds from the demands of the proletariat, to use a big word, rather than from the education of the people, aren't you doing the Legislator a favor, and by so much doing the people a favor? Let there be that balance to the Legislature in its own commission that I have spoken of, so that the Legislator shall say to those insistent people that demand without knowing whether it will be confiscation, what 75-cent gas does, if it can be demonstrated to be proper, and when he does that, he is getting himself out of a hole, and at the same time doing what I wish there were more of them that would do — educating constituents who make those demands upon them by some such answer as that.

"You are sending me up not to do it because you demand it, but with the knowledge of your demand to be able intelligently to answer you as to whether I as a man, and a man of conscience and a man loving my State more than my re-election, can do it for you." But that was only a corollary or an illustration of the points I have already made. And now comes — I was going to say we have come to the last point, and it is the last point I am going to make, as I understand it, because it seems to me that the elision of lines 14 and 15 on page 2, striking out all reference to salaries and leaving them entirely at the behest of the Constitution and what the legislature may constitutionally do thereunder, is removing one of the points at least that my distinguished friend, Mr. Kirby, made and pressed with such eloquence in addressing us. If I am right, that that removes that power, then we are an united and unanimous committee. I do not mean, of course, to speak for Mr. Kirby, because perhaps I did not apprehend the whole scope of his argument, but at least sixteen members of this committee, after careful consideration, recommend this to you; and it is so different from what any one of us would have recommended to you without our days and weeks and months of opportunities in that committee room that I cannot help thinking that the fact that we recommend it ought to have some weight with some of you. I say "some of you"; I mean those who are not as well informed as we were by those circumstances and opportunities. Many of you may be better informed than I am — to such, of course, I am not addressing myself — but to such as sit here as I have sat on other propositions which were considered by other committees of which I was not a member, and learning for the first time the intricacies of matters — to them I can speak and assure them of the infinite care and deliberation and lack of personal interest that I am sure animated the hearts

and minds of all of us, each one according to his respective ability. So I say, having disposed of that subject, I come to the last one, where there is now a sharp difference between one of our distinguished delegates and the rest of the committee, or at least part of the rest of the committee. I refer to Professor Reeves' belief that ten years, and not five, should be the term of these officials. I only speak of this because I want to cover everything, because I do not feel so convinced that our proposition of five years is better than his ten that I believe we ought to try to modify anybody else's opinion on the subject, but I limit it to just my own proposition, which was five years, and which was approved by the majority, at least, of the committee, if not most all of them. I do not believe under the constitutional dignifying of this commission which will accrue to it as the result of our deliberation, if we favor putting them into the Constitution at all, and with the constantly growing importance of the work of this commission — I do not believe but what you will see a very high class of public servants, higher even than there has been up to the present, and I rate that very high, as I have said. I think there will be a constant growth of the feeling of dignity on the part of the people who are elevated to such a commission, I care not whether they be lawyers or practical men. For my part, I would rather that most, if not all, should be more practical men than lawyers can ever be on questions such as these. They are going to work hard and study hard. They are now working hard and studying hard. And when the five-year term, if such be decreed, of one of them shall expire and he shall have demonstrated his usefulness to the State in high degree — and it ought to be in high degree — I do not believe but what he is going to get a reappointment at the hands of most any Governor. I think you will have an extended term; if I did not think so, I would agree with Professor Reeves here and now throw down the white flag of surrender — exhibit it; I do not believe that they throw down white flags, even flags of surrender. But it is my opinion that the retaining of a new commissioner for a longer time than five years will be almost invariable under this measure. I do not believe there are going to be many removals of commissioners because, after all, it takes a Governor with something other than red blood in his veins and with a pretty hard head to remove a man against whom you cannot find anything wicked or absolutely criticisable. I do not believe there will be many removals, and I am always afraid, gentlemen, of a long term for a man scrupulously honest but hopelessly mediocre. I do believe that the vice of long terms — and sometimes I think so of the fourteen-year terms of judges; but not often, I am happy to say, there — I do

think the vice of long terms of office is the difficulty of getting rid of the honest incompetent, but few judges can be found to remove such a man when there is no more serious charge. So I believe the average of service will be higher under a five-year term, extended to good people for ten, fifteen and very likely twenty years, cutting it short for the honest incompetent whom no Governor will reappoint because public demand will show that he has not lined up to his fellows. For all the reasons that I have stated, I ask for the sustaining of the Committee's report when you come to a vote.

Mr. Wagner — We have listened to extraordinarily able addresses in favor of the proposition of making the Public Service Commission a constitutional body and also giving the power in the Constitution that is proposed now by the measure before us. In spite of all the eloquence, I am still of the opinion, as I was when this subject first came up, that it would be a mistake for this Convention to incorporate the Public Service Commissioners as constitutional officers. Judge Olcott in closing stated that where a commissioner had done faithful service there would be no question about his reappointment if public sentiment was that way. I can recall an incident only a few months ago where in the city of New York a member of the Public Service Commission, about whom the sentiment throughout the city was — and he is not of my political faith — that he had been an efficient and a conscientious public service commissioner, was displaced by a gentleman of high character, no doubt, but of absolutely no previous experience either in the conduct of a public service corporation or in his profession in connection with work having to do with public service corporations,— it is generally conceded that his appointment was had as a political reward. Whether you put the office into the Constitution or not, that weakness and failing with which we are all possessed, I take it, will not be eradicated. I am opposed to making them constitutional officers because we are not only in the experimental stage with reference to the character of the supervision of our public service corporations, and also the methods of handling them, but we are as well in an experimental stage as to the State policy. I am one who believes that the question of the supervision of public service corporation by some body to which certain powers are delegated for that purpose is here to stay, but I am not prepared to say that we have so definitely determined the character of that supervision that it should become a part of our permanent and fundamental law, and, of course, only fundamental questions should be in our fundamental law.

Judge Olcott told us of the testimony presented by the public service commissioners now in office and those who had been in

office. Of course, I am willing to concede that any of us holding a public office of any kind have a certain appreciation of the dignity and the importance of that office. I venture to say that you cannot go to any official of this State to-day holding an office of any importance who would not at once tell you of the important functions which he is performing, and that for his protection, incidentally, and mainly for the protection of the people, his office should be made independent and a constitutional office. The gentlemen he has named are worthy public officials performing their duties as best they know how, and conscientiously, and yet I am not willing upon that testimony alone to conclude that these officials should be in our fundamental law. We should keep the supervision of our public service corporations elastic. What do you propose to do under the provisions of this bill? You are creating a separate and distinct legislative body, having mainly legislative functions — some judicial functions and some administrative functions, but mainly legislative functions. You are creating a body not elected by the people but appointed and away from the people, not responsible or responsive to them, to perform work even not concurrent with out present Legislature, but superior in some respects in the exercise of their jurisdiction to our present legislative body. You provide, to begin with, that they shall have the jurisdiction which they now have by law; in other words, you are incorporating into the fundamental law a provision that their power and jurisdiction shall forever be as it is in the laws of our State to-day.

Mr. Blauvelt — I have not the amendment here but is it not the intention that the Legislature shall add to or subtract from those powers without limitation?

Mr. Wagner — No, it is not. You say here, "Each commission shall have the jurisdiction, powers and duties it now has, but nothing herein contained shall prevent the Legislature from enacting laws not inconsistent with this section changing such jurisdiction, powers and duties." Now, no lawyer, I take it, and I am willing to yield to the opinion upon legal questions of others here — I take it that no lawyer will contend that reducing the power of these public service commissions is consistent with the functions which they now perform.

Mr. Blauvelt — I know that it was the intention of the committee to leave the matter wholly with the Legislature to add or subtract from those powers; and, while this language is not mine, I speak for the majority of the committee in the belief that the Legislature might at any time so modify it as to take away power. I know that was the intention of the majority of the committee.

Mr. Wagner — Mr. Chairman, I did have a higher opinion of

the committee's capacity as to draftmanship. I think if that is what you intended, it would be the simplest thing in the world to have stated it in this provision; but as it reads now, there is no other construction which any court can put upon it except that you may add to the powers which they now enjoy but you cannot take away from them any powers which they now enjoy, for the moment you take power away from them it certainly would be inconsistent with the power and authority which they now enjoy.

Mr. Brackett — Will the gentleman permit a question? How else can he explain the presence in the provision of "not inconsistent with"? If they can take away from or add to, then it must be that this phrase "not inconsistent with" is wholly nugatory. It should have no place in the bill at all.

Mr. Wagner — Exactly, but, being in there, there is only one construction you can place upon the words, and that is that they shall have forever the powers which they now enjoy and you may add to them but you can never take them away. My opinion had been, until this suggestion was made, that that is exactly what was intended, because when you read the entire measure, it is something new in the history of our country, and I venture the statement that there is not in the Constitution of any State a provision which creates a Commission with the extraordinary powers which are proposed to be given to this commission, not responsible to the people or to the Legislature.

Mr. Tierney — Does Senator Wagner think that if the Legislature should hereafter attempt to add to the powers, jurisdiction and duties — if the power, jurisdiction or duty added were inconsistent, could they do that constitutionally under this provision?

Mr. Wagner — If the addition were inconsistent, I would say no. I cannot quite conceive of any additional power that you might give the Commission which would be inconsistent with the power which they are now exercising; if it were, I would say that it would be unconstitutional.

Mr. Reeves — You understand the word "changing," as the rest of us do, to mean a change up or down, do you not?

Mr. Wagner — No, the change must not be inconsistent with the powers they now exercise. That, to me, is quite clear.

Mr. Reeves — But the Legislature is to have power to change, consistent with this provision, which is that they start out with the powers they now have.

Mr. Wagner — Exactly.

Mr. Reeves — If it had meant to reduce, it would have said "reduce" and not "change."

Mr. Wagner — The Legislature may change the powers, not inconsistent with the powers which they now enjoy.

Mr. Reeves — That is not the way it reads.

Mr. Wagner — Well, now, that is all that it can mean.

Mr. Reeves — That is putting words into it that are not there.

Mr. Wagner — I will read it again. I do not want to stay forever on that one point, but it is perfectly clear to me, and to those with whom I have discussed it on the outside, whose views are in harmony with mine, that it can add but cannot subtract. It says: "Each commission shall have the jurisdiction, powers and duties, it now has." Now, by that, you incorporate into the Constitution the whole Public Service Commissions Law for twenty years, and then you say: "But nothing herein contained shall prevent the Legislature from enacting laws not inconsistent with this section changing such jurisdiction, powers and duties." Now, no one will contend for a moment that if we should take away from them the power of supervision over a certain corporation, the character of the supervision over public service corporations, no one would contend that that would not be inconsistent with the duties which they now perform. And if the Legislature attempted to do that, I can see some distinguished counsel calling the attention of the court to the constitutional provision here, that it was in contravention thereof.

Mr. Reeves — Can you not read that first sentence to say that they would have the powers and duties which they now have, but that that statement is not to be taken to be inconsistent with a change that the Legislature may make?

Mr. Wagner — Oh, no.

Mr. Reeves — Well, that is the way it reads.

Mr. Wagner — It cannot possibly read that way.

Mr. Reeves — It does not read any other way.

Mr. Wagner — It cannot possibly mean that. It means you shall not make any amendments to the law which will change their powers, inconsistent with the powers they now enjoy.

Mr. Reeves — No statement therein is inconsistent with the power of the Legislature to change, therefore that statement is not inconsistent.

Mr. Wagner — You have gotten far away, if that is what you intended, because it does not say so.

Mr. J. G. Saxe — Does not the gentleman think it would be a good thing in preparing the Constitution to have it so drafted that it would not be open to the debate which has been going on for the last five minutes?

Mr. Wagner —Yes, I am calling the attention of the members

to the situation involved. I am opposed to making them constitutional officers at all, but if you intend what it is said here was intended, I think a sentence couched in the simplest kind of English could express that view. It is done every day. Now, you propose further by this provision to make a commission, and give it legislative power, and make it superior to the Legislature elected by the people, and this commission, not responsible to the people, because appointed for a fixed period of time, you say that the Legislature, the direct representatives of the people shall not pass any act fixing a rate, or a charge, or a standard of service, until after this appointive commission, not responsive to the people, shall first have made a report as to the merits of the proposal involved. It is opposed to the whole fundamental theory, the theory upon which our whole government is constructed. Now, Mr. Chairman, I have heard a great deal here to-day about how we must protect the corporations and their securities. I have been waiting to hear how we are going to protect the people who are interested in the service, and the rates of fare of these public service corporations and thus far we have omitted that important part of the community, or members of our State. Now there is nothing in which the people are so much interested as the operation and the service of the public service corporations; and it is important that the legislative branches of our government, the people's representative, shall always have a certain control over the operation and the fixing of the rate of fare of these public service corporations. I am in favor of public service commissions; but I am not in favor of making them a separate and independent permanent branch of our government where they shall be the arbiter of what character of service the people shall get, and yet, if the people are dissatisfied with their judgment, there is no way that they can get to them, because they are far off somewheres and cannot be removed, except upon charges. Now, we are told that this function is more properly exercised by Public Service Commissions than by a legislative body. Well, now, gentlemen, the greatest reforms in the interest of the people which have been enacted, even during the time that the Public Service Commissions have been in existence, originated with an agitation in the State Legislature. Where was the 80-cent gas bill passed? Did the Gas Commission give it? No. The Legislature enacted the law giving the people 80-cent gas. You take the telephone rates of recent date. Did the Public Service Commission, this body which we are going to create as a permanent independent branch of our government, did they give the people the relief in the form of a reduction in the rates of our telephones? Not at all. I do not say that they did not perform their work well and honestly, but they had the case before them for over a year and

nothing had been done, and suddenly a member of the Legislature, representing one of these districts in which resolutions are passed in behalf of the people, began an agitation in the Legislature for cheaper telephone rates. We were told that it was impossible to reduce these rates without confiscation, and the agitation kept on, and the Legislature, not satisfied with the disposition of the Public Service Commission, passed a resolution appointing a committee which began the conduct of that investigation into the subject in conjunction with the work of the Public Service Commission, and strange to say within several months after that investigation began, the Public Service Commission in conjunction with this Legislature reached a conclusion that there should be a reduction in the telephone rates; and if there had not been this reserved power in our Legislature, to readily respond to a public demand, the case would be going on even now, taking testimony to determine whether or not it would be confiscation to reduce the telephone rates. The full crew bill. The Public Service Commission refused to take any action in that regard.

Mr. Hale — Mr. Chairman, I would like to inquire of Mr. Wagner what his authority is for that statement?

Mr. Wagner — The statement which was made before the legislative committee. If I am mistaken —

Mr. Hale — You are entirely mistaken.

Mr. Wagner — If I am entirely mistaken about it, I will withdraw it. As a matter of fact, though, I say this, that the full crew bill originated in the Legislature, was enacted into law and since its enactment there has been a reduction in the accidents which have occurred upon the railroads in our State, and the records will show that. But, last year, when a propaganda was in progress in this State for its repeal and bills were introduced in the Legislature for the repeal of the law, the legislative leaders of both houses declared in favor of the repeal, yet when the hearing was had the testimony was so overwhelming in favor of the law as it is to-day that the Legislature refused to act, and the law was not repealed. That originated in the Legislature. Now, I am arguing for the proposition that the reserve power over our Public Service Commissions should remain in the Legislature, not upon the theory that the Public Service Commissions are not going to faithfully perform their work, but being away from the people, not constantly in touch with their demands and with their requests, they are not so readily apt to respond to a public demand as members of the Legislature. So that we should always keep in our Legislature a reserve power over these legislative bodies. Now, we were told that by making them constitutional officers we are going to do away with such exhibitions as we had in this year of an investigation in New

York to try and get some evidence upon which to remove Public Service Commissioners. How do you get rid of it in this provision of the Constitution? Could not a legislative committee be appointed just the same to determine the competency, or the inefficiency, or the honesty, of the Public Service Commissioners; and the same procedure and spectacle which we witnessed during the last session of the Legislature with reference to these commissioners could still go on, and I, for one, am not opposed to investigations. I think they are excellent things in the long run, because that investigation gave the Public Service Commissioners of the First District an opportunity to show to the people of the State whether or not, or to disprove the charges which were made against them of incompetency and inefficiency.

Now, there is another question, and then I am through. I do not propose to take very long discussing this question. The question might fairly arise by these provisions in paragraph 2, " except that the Legislature shall not enact any law prescribing a rate or charge or standard of service, equipment or operation of any public utility until after there has been received from one of the commissions a report thereon made after investigation,"—now, the question arises, whether or not with reference to all other powers which we have given the public service commissions by this constitutional provision we have made their authority exclusive and that the Legislature hereafter, with reference to enacting laws for rates, charges, or standards of service, is excluded from all legislative jurisdiction over our public service corporations; and I don't know whether that was intended by the provisions of this act, but it is certainly subject to that construction. Suppose, as was suggested during the investigation of the Thompson committee we wanted to transfer the construction of our subways to the local authorities instead of leaving it with a State commission. If you adopt this provision of the Constitution the Legislature would be without authority to transfer the jurisdiction over the construction of our subways in the city of New York to any local authority. You are tying this thing up hand and foot so that the Legislature, even in response to a public demand, is powerless to act on behalf of the people, because this commission, not responsive to the people or elected by them, to it has been transferred all of the jurisdiction practically over our public service corporations by this constitutional provision and for the reasons I have stated I propose to vote in the negative.

Mr. Cobb — I am in favor of placing the public service commissions in the Constitution, and I am going a very little beyond that. Another member and myself have prepared an amendment with that in view. It at first seemed that the amendment proposed by

General Wickersham covered about the same ground that we had in mind, but inasmuch as the amendment which I am about to offer touches upon one point, at least, that is not covered in General Wickersham's amendment, I will send it to the desk.

The Secretary — By Mr. Cobb: Beginning with line 4, strike out the balance of the Proposed Amendment and insert the following: Section blank. There shall be a department of public utilities, consisting of two commissions. The commissioners shall be appointed by the Governor, by and with the advice and consent of the Senate for a term of five years. A commissioner may be removed by the Governor for cause after he shall have been served with a statement of the causes alleged and shall have had an opportunity to be heard. The Legislature may at any time reduce the number of commissions to one, whereupon the Governor may designate from all the commissioners those who are to continue in office. Until the Legislature shall otherwise provide the existing commissions are continued with their present jurisdiction and powers.

Mr. Wickersham — Mr. Chairman, I sincerely trust that the amendment will not prevail. The idea that these great powers and these manifold duties which are now exercised by two commissions of five each can ever be properly discharged by one commission, I think is something to which this House should not lend its assent.

Mr. Deyo — Mr. Chairman, Delegate Wagner has stated that we are in the experimental stage still with reference to the control of public utilities. In a sense that statement is true, and in a sense it is not in accord with the facts. As far as the control of public utilities is concerned, their supervision by a commission, that has become a fixed fact in the policy of this State and other States of the Union. So far as the jurisdiction of these commissions is concerned, the extent of their powers, the extent of their authority, the subjects over which they shall exercise supervisory power and all of those matters, it is true that we are still in the experimental stage. It was for that reason that the committee, in framing this bill, sought to draw it along such lines that there would be the utmost elasticity to conform with future requirements as time might develop them. The delegate has stated that under the provisions of this bill it would be impossible at any time in the future, should the people, the representatives of the people in the Legislature, desire to withdraw State supervision over the subways in New York city, to delegate that power of supervision over the subways to a local commission in New York city. The delegate has not read this bill, or, at least, has not read in with the eyes and understanding of the committee which framed it. It was intended that the jurisdiction, the powers, and the duties of these commissions might be changed from time to time with the utmost

freedom whenever and as the representatives in the Legislature might see fit and the language was selected with that point in view. There is no use in quarreling over or spending any time in discussion as to the construction of lines 9, 10 and 11 on page 1. It was the intention of every member of that committee that the commission should have the jurisdiction, powers and duties it now has, subject to the right of the Legislature to enact laws changing such jurisdiction, powers and duties whenever and wherever it saw fit.

Mr. Wagner — Why would it not be the simplest thing, so that there would be no question about construction, if the sentence read this way: "Each commission shall have the jurisdiction, powers and duties it now has, until the Legislature shall otherwise order."

Mr. Deyo — Mr. Chairman, in answer to Senator Wagner, I would say there are other powers, there are other features of jurisdiction, and there are other duties which are prescibed in this section than those which have been referred to in lines 9 and 10. For instance, the decisions and the orders of the commissions shall be subject to court review. It was not intended to confer upon the Legislature the power to make any change in the right of the court to review the decisions of the commission. It was not intended to give the Legislature power to change the construction of the commission, the method of their appointment, but so far as the jurisdiction, both territorial, broad in its sense, but also the jurisdiction over the subject matter, the duties and the powers of the commission — it was the intention that those matters should be subject to modification by the Legislature.

Mr. Wagner — Since I made my suggestion, I was shown Senator Foley's bill which has almost the exact provision I suggested a moment ago, in "the terms of the commissioners in each district shall be so arranged that the term of one member shall expire annually upon the first day of February. The members thereof shall perform all the duties, and the commissions shall possess the jurisdiction and powers of the Public Service Commission for the First and Second Districts respectively as now declared by law, until otherwise provided by the Legislature." That was the suggestion I made and recognized by Mr. Foley in his bill introduced earlier in the session. Why cannot we use those simple words?

Mr. Deyo — Mr. Chairman, in answer to Delegate Wagner, I would say that there is no use of our spending time over that matter. There seems to be a difference of opinion as to the proper construction of the language used. In view of that fact there is no doubt that this should be reframed so as to completely and definitely express, without any possibility of dispute, precisely the

meaning which I have stated and which other members of the Committee have stated was the intention of the Committee. There ought to be no room for misunderstanding, and I agree that, as long as there is room for a difference of opinion, the language ought to be changed.

Mr. Wickersham — Mr. Chairman, the hour fixed for adjournment has arrived. If it is the desire of the House to continue this discussion, I will move that the Committee arise, report progress, and ask leave to sit again until eleven-thirty.

Mr. Stanchfield — I would like to inquire, Mr. Deyo, whether the words " are consistent " do not mean precisely the same as the words " not inconsistent "? The inquiry was whether or not the words " are consistent " — do not they mean precisely the same as the words " not inconsistent "? So that taking that section, it would read, " Each commission shall have the jurisdiction, powers and duties it now has, but nothing herein contained shall prevent the Legislature from enacting laws which are consistent with this section, changing such jurisdiction, powers and duties." I mean, does not that illustrate the fact that the Legislature cannot change the existing powers of this commission?

Mr. Deyo — Possibly even that phraseology may be improved upon, but I am very certain that I speak for the Committee when I say that it should not be left where there is any uncertainty. The idea was to give the Legislature complete authority over the powers, jurisdiction and duties of the commissions, with the exception of those matters which do not relate to the matters within its control.

Mr. Brackett — Don't you think that there is a glaring inconsistency in having a Constitution which in one place forbids a Legislature to enact a law which shall refer to another law or any portion of its terms or powers, yet in this place refers not to another place in the body of the Constitution itself, but actually to a statute to determine what the powers of the commissions are, that is, when it incorporates into the Constitution all this language, an entire statute, and compels a reference to all the terms of the statute, and isn't that inconsistent with the other provision?

Mr. Deyo — In answer to the inquiry of Delegate Brackett, I would say that there are times, there are places, and there are circumstances where either that course must be taken in the framing of a Constitution, or in the framing a statute, unless the language be extended unduly. With reference to the criticism which he makes upon the phraseology of this provision, we have abundant precedent for it in several other places in the Constitution where similar phraseology is used with respect to duties and jurisdiction.

The same clause appears, by the way, Mr. Chairman, and gentlemen of the Committee, the same expression is employed in the proposal which has emanated from the Judiciary Committee, of which Senator Brackett is an honored member, and which is upon our desks, on special order for to-morrow. So I say that this bill was designed to do three things: First, to stabilize the commission. In the second place to confer upon it certain powers and in the third place to subject it to the authority of the Legislature, the supreme authority of the Legislature. The criticism which Senator Wagner made that we are creating a body here which is apart from and beyond the Legislature, I consider not a just criticism, because in all these respects it was intended to, and I believe the proposal itself does subordinte the powers and authority of the commission to the superior authority of the Legislature, except as Delegate Vanderlyn has suggested and explained with such fullness and clearness. It was intended that the Legislature should not act upon the subject of fixing a rate or a standard of equipment without first permitting or requiring the commission, which is a sort of committee of the Legislature, to first investigate and report.

Mr. Olcott—Mr. Chairman, I desire to offer a short amendment.

The Secretary — By Mr. Olcott. Page 1, line 11, strike out the words "not inconsistent with this section."

Mr. Standart — Mr. Chairman, I desire to offer an amendment.

The Secretary — By Mr. Standart. Page 1, line 10, strike out as follows: "Nothing herein contained shall prevent the Legislature from enacting laws not inconsistent with this section, changing such jurisdiction, powers and duties," and insert in place thereof "except as the Legislature may hereafter modify the same."

Mr. Brackett — Mr. Chairman. For Mr. Wiggins I offer the following, Mr. Wiggins being called to the train.

The Secretary — By Mr. Wiggins. Amendment proposed to General Orders No. 38, page 2, line 9, strike out the words "in such manner and to such extent."

Mr. Foley — Mr. Wagner referred to the fact that the amendment had been introduced by me which created simply a constitutional body of both Public Service Commissions, a constitutional recognition. In the deliberations of the Committee, I very strenuously opposed a scheme to make the power of the Commissions exclusive and to take away from the Legislature entire jurisdiction over rates and service of public service corporations; and I did that, having in mind the thought that the reserve power in the Legislature furnished a salutary check upon the possible dilatory action of the Commission or even the failure of justice on their part. Now, Mr. Mandeville referred to the fact that it is

unseemly to have the representatives of these public service corporations hanging about the legislative chambers and dangling around the railing. I see no objection to a proper and fair consideration of rate or service bills in my experience in the Senate. I was chairman of the Railroads Committee for two years, and as a matter of course, I referred any question as to rate or service to the Public Service Commission for investigation and report, and I was promptly and speedily supplied with a statement as to the expert opinion of the Commission and its engineers on the bills before the Committee. I did not find much sentiment in the Legislature for the passage of rate bills, except where there had been a great amount of public opinion created in favor of a proposition. Now, the quarrel I have with this proposition is the attempt made to regulate procedure by the Legislature in a Constitution. In another section, in article three, you have authorized the Legislature to make rules as to conduct of its business, and the suggestion here might properly be a rule of either the Senate or Assembly, or a joint rule of both Houses providing for the reference of such matters to the Public Service Commission. But the vice in this amendment is that you fix conditions precedent to the passage of a rate bill by the Legislature and you thereby, in my opinion, enable the courts to review the action of the Legislature in fixing a rate. At the present time I agree with Judge Hale it was never intended by the Legislature that there should be a review of law and of fact by the courts over orders of the Public Service Commission. Section twenty-three, I think it is, of the Public Service Commissions Law, clearly indicates an opposite intent and yet the courts, by certiorari not only review the law, but also the facts upon which the order was issued. And in exactly the same fashion, I believe, if you adopt this proposal, the courts would look into the sufficiency of the investigation by the Public Service Commission as justifying the passage of the rate bill, and therefore I am opposed to this particular phase of this measure. I am also opposed to the question of the review. I think that should be left outside of this proposition and should be left with the Legislature, somewhere along the lines of the language Senator Wagner has just quoted from my proposal. You can leave the question of jurisdiction safely with the Legislature and there is no necessity to refer to it in the Constitution.

It is also amusing to me to hear the gentlemen from the different parts of the State referring to the possible combination of these two commissions, the first district and the second district commission. To hear them talk, you would imagine the only work the Public Service Commission of the First District is doing is to build our new subway system there. That alone would be

a tremendous undertaking. We are spending $330,000,000 in constructing a subway system, but when you realize that the number of passengers carried on our railways within the first district jurisdiction is twice as great as the total number of passengers carried on all the steam railroads of the United States you can estimate the magnitude of the work they are doing. Not only that, but they regulate the gas corporations down there, and I saw a report the other day where New York city used twenty per cent. more gas than all the rest of the entire territory of the United States. Electrical corporations, supervision of the issue of securities, in hundreds of millions a year; steam corporations; bus lines; every conceivable form of public utility is supervised by the first district commission, and there never will be a time in this State when it will be possible with the amount of work, even after the completion of the subways, to combine the functions of the first and the second district commissions. In their very nature they are different. One is a metropolitan problem and the other is a rural problem, and I think it is most important that there should be this recognition of the Public Service Commission and a recognition of the double commission in the division between down-state and up-state. I sat on the Thompson Committee for four months this year, and I had an opportunity to observe the disorganization which took place in the two commissions between January 30th, the date of the first hearing, and the latter part of June, I think it was, when Governor Whitman dismissed the charges against the first district commission, and made it impossible, or, at least, unthinkable, to file charges against the second district commission. The subordinates on the commission were disorganized; corporations regulated and controlled by the commission openly disobeyed and flouted the authority of the commission; no attention was paid to the commission's orders; violations went on; representatives of the corporation controlled began to get ready to accommodate themselves to what they thought was going to be the new order and to the men they thought were going to be appointed in place of the commissioners, and for a period of four months there was a complete breakdown of public service regulation in this State. Judge Hale, I know, will support me in that view so far as the second district commission was concerned. And the declared purpose of that investigation was to get the positions. Public opinion promptly appraised the efforts and the newspapers soon crystallized the sentiment of the people of this State and exposed the plain intent of the investigators. Now, unless you have some fixed tenure of office and provide for a fair trial of these commissioners and a method of hearing charges properly, instead of the present system which enables the Governor to remove on the ground of inefficiency — or on that assigned

ground — merely because he does not like the face of the commissioner, or, as the majority report put it, because he was not in sympathy with the law or because he was not living up to what the Governor might think was a proper administration of his office — unless you fix a proper way of testing the efficiency of these men or their inefficiency, you will have a breakdown again in public service regulation in this State.

Mr. Chairman, I hope that Mr. Wickersham's proposal, as I understand it, the elimination first of any prohibition against the Legislature properly exercising control over public service corporations, and, secondly, the elimination of the review subject leaving that question to the Legislature, without specific reference, the particular amendment of Mr. Wickersham which accomplishes those two purposes will be adopted, and I hope that there will be some recognition of the public service commissions and of the important jurisdictions they have in the Constitution. I am not afraid, from the standpoint of one who has been a little bit concerned with representing, I might say, the people's side, if that is not too demagogic a term — I had my part in the telephone investigation of New York City and in the reduction of telephone rates, and I represented what might be called the people's side, and I don't think there will be any harm done to the people's rights, by including these two bodies in the Constitution.

Mr. Marshall — Mr. Chairman, I offer the following amendment.

The Secretary — By Mr. Marshall. From the amendment proposed by Mr. Wickersham, strike out the last sentence and substitute in lieu thereof the following: "Any Commissioner may be removed by the Governor for cause after an opportunity to be heard." From line 9 of the amendment strike out the words "at present," and substitute the word "now."

Mr. Landreth — Mr. Chairman, I had intended to say a few words regarding the desirability, in my opinion, of recognizing the Public Service Commission in the Constitution. The lateness of the hour makes that inappropriate. I desire to say that I wish to hand up a proposed amendment, not one which I prepared myself, but one which was prepared by representatives of a large number of engineers and Public Service Commission men in New York, and, at their request, introduced by me earlier in the session. The bill at that time contained a clause which I could not myself subscribe to, and on that account was submitted by request. I desire to-night to eliminate the clause to which I could not subscribe, and also to modify it slightly, and pass it up as an amendment. This suggested amendment provides for a single Commission, and it does so with the clear conception of the fact that the

present functions of the Commission, district number one, comprise not only legislation and judicial procedure, but also execution, while the Commission of district number two includes only the first; it does not contain any work of execution. It seems to me inappropriate that any Commission for the purpose of legislation and judicial procedure should also be vested with the work of constructing, executing, operating the very plans it is intended to regulate, and therefore I see that in the early future the work of district number one will be split up, or, rather, more properly, that the work of construction will be relegated to a local Commission. It seems to me that if we are to accord the City of New York any measure of home rule which is worth while and which will be adequate to permit it to construct and operate its own subways, subject, of course, to State regulation — when that is true, that relieves Public Service Commission number one of 85 per cent., according to Mr. Smith, of its functions. With that reduction, it seems to me that the work of the State, including New York City, can be operated by a single Commission.

The bill in question follows the general lines of the committee's bill, with this major difference of one commission instead of two, and it also departs from it in a number of minor ways which it has seemed to me from this debate leave the bill less open to criticism than the one of the Committee. I am heartily in sympathy with the recognition of the work of this important branch of State government in the Constitution. It is true that State regulation is in an experimental stage, and still it has passed the first portion of that stage. We have come pretty generally in this country to accept the view that between the evil of unregulated common carriers and the public utility corporations on the one hand, and the other extreme of State ownership, lies this compromise of private ownership and public regulation. That, I think, is pretty well exemplified. We have been recognizing it for twenty-five years in our State activities. The granger movement followed by the granger laws had extended both up and down — upward in the direction of the Interstate Commerce Commission establishment and its rapidly expanding functions; downward into our local municipal activities, local public utilities operations, and, therefore, we may say it has come to stay. To that extent it is not experimental, and therefore it seems to me entirely appropriate and proper that that much, at least, should be recognized in our Constitution. On the other hand, the formation should be so elastic, confined to such general terms as to be capable of explanation and modification in the Constitution, and I am inclined to think that this bill, prepared by this committee of engineers, meets that possibility fairly well.

Mr. Wickersham — Mr. Chairman, I would like to make a correction. A moment ago Mr. Cobb's amendment was offered. I understood as it was read that it proposed to authorize the reduction of the commissions to single individual commissions. The criticism which I then expressed was with respect to that idea — I have now seen the measure and I find I was quite mistaken in my understanding of it, and I of course withdraw my comment. The provision which Mr. Cobb has prepared is a very excellent framework. It has one or two points as to which I don't agree, but I will withdraw the criticism regarding it which I made a moment ago.

The Secretary — Proposed substitute for amendment No. 767, introductory No. 706, by Mr. Landreth. Article V of the Constitution is hereby amended by adding a new section thereto to be appropriately numbered to read as follows:

§ —. Between January first, nineteen hundred and seventeen, and March first, nineteen hundred and nineteen, the Legislature shall provide for a public service commission of five members who shall be appointed by the Governor by and with the advice and consent of the Senate. Each commissioner shall hold office for ten years. The terms of the commissioners shall be so arranged that the term of one member shall expire upon the first day of February in alternate years. Each commissioner should have had experience in connection with public utilities which would fit him for the duties of the office. The commission shall regulate and supervise all common carriers, all water supply, irrigation drainage, gas, power, lighting, heating, intelligence-transmitting and other public utility corporations operating within the limits of New York State, including similar activities on the part of any other State department or political subdivision of the State, and the acts, orders and rulings of the commission shall be subject to such review by the courts as the Legislature may provide. Removal by the Governor of any commissioner should be made only after the filing of charges and after affording the accused an opportunity to be heard in the matter. A successor to a commissioner who has been removed should be appointed to fill the unexpired term. Vacancies caused by removal or otherwise should be filled under conditions similar to those governing original appointment.

Mr. Hale — Mr. Chairman, I had hoped that by extending the time, or rather by not calling the attention of the Chair to the time, the Committee of the Whole might get to the point where it would take a vote, either that it did not desire to have the commissions recognized in the Constitution, which would be an end of the matter; or, if they were to be recognized in the Constitution

that some expression, either something along the line of the Committee's report which goes somewhat in detail or along the line of a statement like that offered by Mr. Wickersham — I had hoped that the Committee of the Whole would indicate its preference in the matter but I see that we have not reached that point and are not likely to do so to-night and so I want to offer another amendment and then move that the Committee report progress and ask leave to sit again and I ask that these various amendments may be printed for the information of the Committee.

The Secretary — By Mr. Hale. Page 2. Strike out lines 8, 9 and 10.

Mr. Wickersham — Mr. Chairman, I move that we rise, report progress and ask leave to sit again and that we ask the Convention to authorize the printing of all the amendments that they may be before the body to-morrow morning.

The Chairman — You have heard the motion. All in favor will please signify by saying Aye, opposed No. Carried. (The President resumes the Chair.)

The President — The Convention will come to order.

Mr. Steinbrink — The Committee of the Whole has continued consideration of General Order No. 38 and directs me to report progress and ask leave to sit again, and it asks that the amendments which have been filed with the clerk be printed for the information of the Convention.

The President — Those in favor of agreeing to the report of the committee, granting leave to sit again and printing the amendments, will say Aye. Contrary No. The leave is granted and the amendments are ordered printed. Under the order already adopted the Convention stands adjourned until 10 o'clock to-morrow morning. Whereupon, at 11 p. m., the Convention adjourned to meet at 10 o'clock a. m., Wednesday, August 18, 1915.

WEDNESDAY, AUGUST 18, 1915

The President — The Convention will please be in order. Prayer will be offered by the Rev. John Bulnes.

The Rev. Mr. Bulnes — Let us pray. Almighty God, our Heavenly Father, we come before Thee with grateful hearts. We thank Thee for Thy loving kindness and tender mercies and all the good things that have come into our lives, but we thank Thee most, Father, for knowing that Thou art so loving and good. We pray Thee that Thou wilt bless this Convention to-day, that Thou wilt bless each member, that Thou wilt fill them with Thy spirit's

power and presence. Help them, Oh Father, to realize their great importance, in regard to matters of State. Help them, Oh Father, to realize that they are making laws or amendments that will not be only for this State, but will be something for the whole country and for other countries. We are so glad and so thankful that Thou hast chosen men to be worthy to perform great duties for Thee and for Thy people. Most of these men have come from different parts of the State and country, and we pray Thee that Thou wilt bless their homes. Thou knowest that there are anxieties in the homes until each one returns. Bless their wives and children and mothers and all their relatives. Father, we realize that, after all, we are just one great family. So we pray Thee to be very gracious to these men to-day. Help them to be self-composed and self-controlled; help them to realize that Thou lookest down upon them and that Thou delightest in them, not only for this occasion, but forever and hereafter. Father, bless our country as a nation, keep us as in the hollow of Thy hand. Bless all those, Father, who have been made worthy to rule this nation, even in the smallest hamlet. This we ask in the name of Jesus Christ, Our Lord. Amen.

The President — Are there any amendments to be proposed to the Journal as printed and distributed? There being no amendments proposed, the Journal stands approved as printed. Presentation of memorials and petitions. The Chair lays before the Convention a communication from the Buffalo Chamber of Commerce which will be referred to the Committee on Canals. Communications from the Governor and other State officers. Notices, motions and resolutions. The Secretary will call the roll of districts. Reports of standing committees.

Mr. Brackett — Before we leave the order of notices, motions and resolutions may I hand up a copy of a letter signed by the Hon. Elon R. Brown, and ask that it be read to the Convention?

The President — Is there any objection to the reading of the letter? The Secretary will read the letter.

The Secretary —

NEW YORK, *August* 13, 1915.

Hon. HENRY L. STIMSON, *Chairman, Committee on State Finances:*

Hon. FREDERICK C. TANNER, *Chairman, Committee on State Officers, Constitutional Convention, Albany, N. Y.:*

GENTLEMEN.— The budget amendment and the alleged short ballot amendment are objectionable. While they come from different committees, they work together to create an autocrat in the Executive Chamber. Is this wise?

It is claimed for the budget that it will abolish the evil of log-rolling in appropriations. Log-rolling has been unknown since the

Governor has had the power to veto items in the appropriation bills. The present amendment effectively transfers the power of making appropriations from the Legislature to the Governor. The power reserved to the Legislature of reducing, but not increasing or initiating appropriations in the appropriation bills is an empty form, and will find the Legislature in a rather weaker position than the present board of aldermen of the city of New York. If a Senator or Assemblyman knows that an appropriation for charities, education or the courts is insufficient, he must support it, although disapproving it as inadequate. Who will desire to play such a role? The right to tender a separate bill after the appropriation bill is passed means the right to raise the question in the last crowded hours of adjournment when there can be no opportunity for deliberation. The charge that appropriations are not properly considered in the Legislature has the same justification as the present cry that the Convention is doing nothing and accomplishing nothing, and no other. The Committee's reference to this style of budget-making in Porto Rico and the Philippines is not persuasive. Are the people of this State ready to place in one man's hand without a President's power of removal the power the Federal Government places in the Governor-General of Porto Rico or the Philippines over those dependencies? The scheme was devised to rescue our larger cities from the plunderers who got control of local boards, but the budgets and debts of the cities have grown incomparably faster and more improvidently under the new system than the budget and debt of the State. There would be no State debt but for referendum appropriations. Pray do not mistake my objections as being made to all budgets. The principle of a budget was applied in the last Legislature and has often been applied before. It could be enforced by a simple provision requiring all appropriations to be in one or two bills unless an emergency appropriation was requested by the Governor. I know it is the fashion to speak lightly or worse of the Legislature and its work, but that is only a fashion, as it may be a fashion to speak ill of the Convention or the Governor or the President. It isn't enough to support so serious a departure from the fundamentals of representative government as the present budget plan.

The so-called short ballot amendment is, as you well know, a delusion. The withdrawal of three names from a ballot containing fifty or even twenty will afford no appreciable relief to voters, whether ignorant or informed. Its leading advocates are preparing trenches for their retreat when discovered, by criticising you for not making the Attorney-General and Comptroller appointive, as if two more deducted from fifty would insure the ideal short ballot. But in reaching for the unattainable, you may have done

a very serious injury to the public interest. The Comptroller's office is the greatest department at Albany. It has been managed for thirty years with signal ability, economy and public benefit. Its success has been principally due to the maintenance in that department of the permanent under-secretary system, chiefs of bureaus being retained regardless of party. What sufficient reason can be given for dismantling this large and satisfactory department? The sum total of departments will not be reduced by dividing it. The change will have the effect of greatly increasing the political patronage of the Governor, and with the new power of appointment in other departments ought to keep him pretty busy with representatives of his political party from the various counties, come to recommend candidates he can appoint, with little knowledge of their fitness and less of their performance.

Whatever your enactment, there will be no cabinet at Albany. The Governor has long appointed heads of the Insurance, Excise, Conservation, Highways, Public Works, Charities and Prisons, but they did not become cabinet officers for there was no place for a cabinet at Albany. There is no need to increase the Governor's power either to make the place coveted by good candidates, or to make the office effective. A Governor of character and force can with difficulty be checked when he is wrong; nothing can stop him when he is right. The impulse to direct primaries started by Governor Hughes was strong enough to enable Governor Glynn to impose them on the State against the will of his party. You have been considering their effect upon the State, and particularly the judiciary. There is, however, the gravest need of increasing the attractions of public life at Albany to able and ambitious men. There will be no attraction for such men in Albany if the Legislature is stripped of power and furnishes no opportunity for a career. These amendments are a move in a wrong direction. Before you submit these proposals to the electors, permit me to recall to you that what we are we have become under our present form of government and largely under its fostering care.

Very respectfully yours,

(Signed) ELON R. BROWN.

Mr. Stimson — Mr. President, since the gentleman from Saratoga has seen fit to offer a letter addressed to me on the subject of budget, I ask permission to submit to the Convention this letter from Hon. Nicholas Murray Butler on the same subject, which I ask to have read to the Convention.

The President — Is there objection?

Mr. Brackett —A point of order.

The President — The gentleman will state the point of order.

Mr. Brackett — The point of order is in his anxiety to try to meet the arguments of the letter of Mr. Brown, the gentleman has cut in before that has been disposed of. I want to make a motion as to the disposition of the Brown letter.

The President — The point of order is not well taken. The reading which was asked has been given and the gentleman from New York, Mr. Stimson, has been recognized and has the floor. The question is whether the letter from Mr. Butler shall be read. Is there objection?

Mr. Brackett — I move that it be read.

The President — Is there objection? The Chair hears none and the letter will be read.

The Secretary —

COLUMBIA UNIVERSITY IN THE CITY OF NEW YORK
PRESIDENT'S ROOM

August 12, 1915.

Hon. HENRY L. STIMSON, *Care Constitutional Convention, Albany, N. Y.:*

Mr. Brackett —A point of privilege for a moment.

The President —The gentleman will state his point of privilege.

Mr. Brackett — The Clerk did not read the previous letter quite as loud and distinctly as I wish he had and he is commencing the same way here. I am very anxious to hear.

The President — The Secretary will read in an audible tone.

The Secretary —

COLUMBIA UNIVERSITY IN THE CITY OF NEW YORK
PRESIDENT'S ROOM

August 12, 1915.

Hon. HENRY L. STIMSON, *Care Constitutional Convention, Albany, N. Y.:*

My Dear Mr. Stimson: I rejoice at the news contained in this morning's papers that your Budget plan has been advanced to a third reading by a very heavy majority. I hold the introduction of this plan in the State of New York to be the most effective and the most practical step that has been taken in a generation toward the strengthening of our representative system of government and toward making it both more efficient and more directly responsible to the people. If, in addition, the plan for the reorganization of the State Departments is adopted, the Convention will have done a great work. With hearty congratulations,

I am, faithfully yours,

NICHOLAS MURRAY BUTLER.

Mr. Brackett — Mr. President, I move — I am now seeking to follow the procedure that was taken with the Wadsworth letter — I regard this letter of Senator Brown, who, beyond all question and by common consent of the people of the State, I think is recognized as one of our wisest men and best informed men with respect to the affairs of the State of any one in the State, one whose long service and whose fine manliness and whose philosophy of mind renders him beyond question an authority on the subject on which he speaks, I ask that that letter be sent to the Committee on Governor and Other State Officers, with a copy to the Committee on State Finances.

The President — Is there objection to the reference of Mr. Brown's letter to the Committee on Governor and Other State Officers? There being no objection, the letter of Senator Brown is referred to the Committee on Governor and Other State Officers.

The President — There being no objection, the letter of Senator Brown is referred to the Committee on Governor and Other State Officers.

Mr. Stimson — Mr. President, I did not wish to object to the Senator's sending it, if he desired to, but, inasmuch as the letter was directed to the chairman of the Finance Committee and to the chairman of the Committee on Governor and Other State Officers, I thought that process was rather unnecessary.

Mr. Brackett — Mr. President, while the letter may have been sent to those gentlemen, I have heard it presented to this Convention, and the sending by the writer to those gentlemen did not make any action on the part of this Convention. It is eminently proper that the Convention should recognize the existence of such letter and should express its appreciation of its existence by sending it to the Finance Committee.

The President —Without objection, a copy of Mr. Brown's letter will be sent to the Committee on Governor and Other State Officers and to the Committee on State Finances.

Mr. D. Nicoll — Mr. President, may I say for the benefit of the Convention that if anybody has any difficulty in seeing a copy of the letter, they can find it in full in the Albany *Argus* of this morning.

The President —Are there any reports of standing committees?

Mr. Stimson — Mr. President, for the Committee on Finance, I submit the following Proposed Amendment in reference to appropriations, for the purpose of construction, together with a report upon the subject.

The President — The Secretary will read the report.

The Secretary — By the Committee on State Finances, Revenues and Expenditures. Proposed Constitutional Amendment, To amend Section 20 of Article 3 of the Constitution in relation

to the appropriation of public moneys for construction purposes. Second reading, To amend Section 20 of Article 3 of the Constitution in relation to the expenditure of public moneys for construction purposes.

The President — Is there any special disposition desired of this proposed amendment? No special disposition being moved it is referred to the Committee of the Whole.

Mr. Marshall — The Committee on Bill of Rights has a report to submit, and its formal report will be presented presently and to-day, but in the meantime in order that the measure which it recommends may be put upon General Orders, the Committee reports Proposed Constitutional Amendment, To amend Article 1 of the Constitution generally, To repeal Section 1 of Article 7 of the Constitution, and to amend Section 9 of Article 8 of the Constitution.

The Secretary — By the Committee on Bill of Rights; Proposed Constitutional Amendment, To amend Article 1 of the Constitution generally; repeal Section 1 of Article 7 of the Constitution, and to amend Section 9 of Article 8 of the Constitution. Second reading. To amend Article 1 of the Constitution generally, repeal Section 1 of Article 7 of the Constitution, and to amend Section 9 of Article 8 of the Constitution.

The President — Is there any special disposition of this proposed amendment desired?

Mr. Marshall — I move that the Committee's report be adopted and that the bill be sent to General Orders.

The President — No special disposition being moved, the proposed amendment is referred to the Committee of the Whole.

Mr. Bayes — I understand that the Chairman of the Committee on Bill of Rights has made his report, and I therefore desire to move to disagree with his report, in so far as it reports adversely on proposed amendment No. 45, relating to number of jurors, and I ask this motion to lie on the table.

The President — The Secretary advises the Chair that there is no adverse report before the Convention.

Mr. Marshall — Mr. President, the Committee does not report one way or the other on that report that Mr. Bayes refers to.

The President — The motion, therefore, cannot be entertained. The Chair would suggest to Mr. Bayes that at the time of the submission of the report which is to be handed in presently, if he so desires, his course would be to move to discharge the Committee from further consideration of his Proposed Amendment, and that will bring something before the Convention, but as they have not reported on that measure, there cannot be any agreement or disagreement.

Mr. Bayes — I will do that at the proper time.

Mr. Clinton —A report from the Committee on Canals recommending the passage of Proposed Amendment.

The Secretary — By Mr. Clinton, from the Committee on Canals, to which was referred Proposed Amendment introduced by Mr. Cullinan, No. 590, Int. No. 575, entitled Proposed Constitutional Amendment, to amend Section 10 of Article I of the Constitution in respect to the ownership by the State of all waters within its jurisdiction, reports in favor of the passage of the same with the following amendments: Page 1, line 9, strike out all after the words "jurisdiction of the State." Strike out all of line 10, on page 1, and the three lines on page 2.

The President — Is there special disposition desired of this Proposed Amendment? There being no special disposition moved, the Proposed Amendment is referred to the Committee of the Whole. Any further reports of standing committees? Reports of select committees? Third reading of Proposed Constitutional Amendments. The Clerk will read the amendments upon the third reading calendar in their order.

The Secretary — No. 746, by Mr. Austin.

The President — This amendment is now open for debate for one hour under the five-minute rule.

Mr. D. Nicoll — I call your attention to the fact that the members have not the amendment in the form that it comes from the Committee on Revision.

The President — The Secretary advises the Chair that the amendment in final form is on the desks of all members.

Mr. Austin — This amendment was introduced by me and was so thoroughly discussed in the Committee of the Whole that I feel it unnecessary at this time to make any further comment on it. It was advanced, I believe, with only one dissenting vote, and, unless some other member desires to indulge in further discussion on it, I shall not do so myself.

The President — The Secretary will continue the reading.

The Secretary —

PROPOSED CONSTITUTIONAL AMENDMENT

To amend Section fifteen of Article three of the Constitution, relative to the passage of bills by the Legislature, by striking out the authorization for the passage of bills under emergency messages from the Governor

The Delegates of the People of the State of New York, in Convention assembled, do propose as follows:

Article three, section fifteen of the constitution is hereby amended to read as follows:

§ 15. No bill shall be passed or become a law unless it shall have been printed and upon the desks of the members, in its final form, at least three calendar legislative days prior to its final passage; nor shall any bill be passed or become a law, except by the assent of a majority of the members elected to each branch of the legislature; and upon the last reading of a bill, no amendment thereof shall be allowed, and the question upon its final passage shall be taken immediately thereafter, and the yeas and nays entered on the journal.

Mr. Schurman — Mr. President, I ask, for information, whether it is now in order to proceed,— whether a motion is necessary to advance —

The President — Nothing is in order except the reading of this amendment. The question is shall the Proposed Amendment be adopted? All in favor of the adoption of the amendment will answer Aye upon the call of their names; all opposed will answer No. Before the beginning of the roll call, the Secretary will instruct the Sergeant-at-arms to notify the members of the Committee on Public Utilities that the roll call is about to begin.

The Secretary will call the roll.

Those who voted in the affirmative were: Messrs. Adams, Aiken, Allen, S. C., Austin, Baldwin, Bannister, Barrett, Bayes, Bell, Berri, Betts, Blauvelt, Brackett, Brenner, Burkan, Buxbaum, Clearwater, Clinton, Cobb, Cullinan, Curran, Dahm, Daly, Dennis, Deyo, Dick, Donnelly, Doughty, Dow, Drummond, Dunmore, Dykman, Endres, Eppig, Fobes, Foley, Ford, Gladding, Green, Greff, Griffin, Haffen, Hale, Heaton, Hinman, Johnson, Jones, Kirby, Landreth, Latson, Law, Leary, Leggett, Leitner, Lennox, Lincoln, Linde, Lindsay, Low, Mandeville, Martin, F., Martin, L. M., Marshall, Mathewson, Mealy, Meigs, Mereness, Newburger, Nicoll, C., Nicoll, D., Nixon, Nye, O'Brian, J. L., O'Brien, M. J., O'Connor,

Olcott, Ostrander, Parker, Parmenter, Parsons, Pelletreau, Phillips, J. S., Phillips, S. K., Potter, Reeves, Rhees, Rodenbeck, Ryan, Ryder, Sanders, Sargent, Saxe, J. G., Saxe, M., Schoonhut, Schurman, Sears, Sharpe, Sheehan, Shipman, Smith, A. E., Smith, E. N., Stanchfield, Standart, Steinbrink, Stimson, Stowell, Tierney, Tuck, Vanderlyn, Van Ness, Wadsworth, Wagner, Ward, Waterman, Weber, R. E., Weed, Westwood, Wheeler, Whipple, White, C. J., Wickersham, Williams, Winslow, Wood, Young, C. H., Young, F. L., President.

The President — 127 votes having been cast in the affirmative and none in the negative, this proposed amendment, having received the affirmative votes of a majority of all the delegates elected to this Constitutional Convention, is declared adopted. The Secretary will read the second proposed amendment upon the calendar of third reading.

The Secretary — No. 801, by the Committee on Education.

PROPOSED CONSTITUTIONAL AMENDMENT

To amend Section 1 of Article IX of the Constitution, in relation to the supervision and control by the State of the education of children

The Delegates of the People of the State of New York, in Convention assembled, do propose as follows:

Section one of article nine of the constitution is hereby amended to read as follows:

Section 1. The state shall continue the supervision and control of the education of children as a state function and no powers in derogation thereof shall be conferred upon the local authorities of any civil division of the state. The legislature shall provide for the maintenance and support of a system of free, common schools, wherein all the children of the state may be educated.

The President — The question is upon the adoption of the Proposed Amendment which has now been read.

Mr. Sheehan — Before this matter is disposed of, I should like to ask the Chairman of the Committee on Education a question or two. Under the guise of providing for the better security of religious freedom, the Legislature in 1892, I have not the particular chapter, but in 1892, in effect prohibited the reading of any particular Bible to the inmates of penal institutions over which the State had control. If this proposition is written into the Constitution I ask the chairman of the Committee on Education if the Legislature will not have similar power to prohibit the reading of any Bible in the schools of the State over which it has control, and I pause for a reply.

Mr. Schurman — Mr. President, the Proposed Amendment does not deal with that question at all, and I should think it has absolutely nothing to do with it.

Mr. Sheehan — I ask again, Mr. President, and I ask a frank discussion of the proposition. Assuming that most of the great religious denominations of the State within the next twenty years adopt the denominational school system wherein religious doctrine is taught side by side with the studies approved by the State Board of Regents, can the State under the authority here conferred attempt to regulate such institutions? I am making no argument. I simply address those questions to the distinguished chairman of the Committee, and it is no answer, I submit, to the question, that this Proposed Amendment does not deal with the subject or does not give the authority to deal with it.

Mr. Marshall — I do not really understand the question which the gentleman from New York has addressed to the chairman of the Committee on Education. He has requested me to answer and give my views as to the interpretation of this section. I cannot conceive how it is possible that this provision shall in any way deal with the subject of religion. It is to be read in connection with Section 3 of Article I of the Constitution, which guarantees the right to the free exercise and enjoyment of religious profession and worship, without discrimination or preference, and that liberty of conscience secured by the Constitution is absolutely buttressed about by the provision which I have just read. Now, in connection with the education of the children of the State, we are not dealing with anything but secular education, not with religious education. It has never been a part of our educational policy of the State to have subjects of religion made a part of our educational curriculum, and I should be the first man in this Convention to take up the cudgel for absolute religious liberty, for absolute severance of church and state, for prohibition of any attempt to interfere with the absolute freedom of conscience of the children of the schools and of the parents who send their children to school. During the last session of the Legislature an attempt was made to require the compulsory reading of the Bible in the schools. I fought against that measure as I always shall if any such measure should be attempted to be introduced in the Legislature of this State, and feeling as I do upon the subject and expressing what I understand to be the views of the chairman of the Committee on Education upon that subject, I do not think that there is the slightest occasion for concern on the part of anybody who is interested in maintaining the policy which has heretofore prevailed in this State of absolute severance of church and State, of the absolute division between religious and secular education, and there is absolutely no danger that

I can see possible within the language of this provision to those principles.

Mr. Sheehan — Mr. President, just a word in reference to Mr. Marshall's suggestion. I do not suggest that this proposition at all restricts the free right to religious belief; that is not what I have in mind, because it does not, and it could not do so in the light of the other part of the Constitution to which Mr. Marshall refers. But, assuming that education is to be a State function, and assuming that the Legislature, through the power which it confers upon the Regents, fixes the course of studies to be adopted in parochial schools — let us assume that they are in control of parochial schools substantially as they are in control of the public schools — can they prohibit religious teaching at the same time that they are receiving secular teaching?

Mr. Marshall — Is it your fear that this would enable the State educational authorities to prohibit religious training in parochial schools in connection with the secular training at those schools?

Mr. Sheehan — Would the Legislature have such power?

Mr. Marshall — I do not think it is possible that they could exercise that power. That is certainly far from any possible intendment of this provision. This merely deals with the general subject of education. There is no right to interfere in parochial schools, so far as it relates to the religious training of the children in the parochial schools. All that can possibly be done by the State in connection with the parochial schools would be that the children should attend those schools and be obliged to pursue certain school studies at some time in accordance with some general requirement, as for instance, that they should be required to learn to read and to write and know something of the rudiments of arithmetic, know something of geography and possibly something about the history of our country, and subjects of that character. There would be no possible right to interfere with the study of religion in connection with secular subjects, either intermingled or interwoven or separately. Such a prohibition cannot be deduced legitimately from the language of this Constitutional provision.

Mr. Blauvelt — The present provision of the Constitution reads: "The Legislature shall provide for the maintenance and support of a system of free common schools wherein all the children of this State may be educated." That provision has been construed by the courts to mean that public education is a State function. The intent of this amended section is to write that into the Constitution, so that the State can never in the future transfer or surrender or alienate that sovereign duty. There is no provision

in the present Constitution, and no intent in the proposed amendment, to compel children to attend the public schools. There is a statute which provides that all children of certain ages must attend school a certain period of time each year. The Board of Regents and the Department of Education have prescribed in the public schools the curriculum and the standard of education to be taught in those particular years to the children attending the public schools. Children attending sectarian schools comply with that statute if they attend the required period and the schools teach the course of study prescribed by the Board of Education and the University of the State. The Legislature now exercises to that extent jurisdiction over the sectarian schools. It is not intended by this provision to give any greater power to the Legislature or to the Board of Education than they now possess, to change that present provision of the statute in that respect. In so far as a child's religious instruction is concerned, every child is protected by the provision of the Constitution which Mr. Marshall has read.

Mr. Sheehan — I want to put another question to Mr. Blauvelt or to Mr. Marshall. I am sorry to take up so much time.

The President — That can only be done by unanimous consent.

Mr. Sheehan — Well, I desire to make this point —

The President — The Chair is sorry to inform Governor Sheehan that his time under the rule has expired. Is there objection to Mr. Sheehan putting the question which he desires? The Chair hears none and the opportunity is afforded.

Mr. Sheehan — I call the attention of Dr. Schurman and Mr. Marshall and Mr. Blauvelt to the language of the present Constitution, article nine, section one: "The Legislature shall provide for the maintenance and support of a system of free common schools wherein all the children of the State may be educated." I also call their attention to the fact that in this proposal it is stated: "The State shall continue its supervision and control of the education of the children," etc. It is a broadening, as I read it, of the present section one, article nine, of the Constitution. Parochial schools are now subject to visitation by the Regents. If we have a general adoption of the parochial school system, attaching, as it possibly may, to all the great religious denominations within the next twenty years, can the Legislature or the Regents abolish or regulate, if you will, the character of the textbooks that will be used or read in these schools?

Mr. Shipman — Mr. President, as one of the Committee on Education and as one of the advocates of this amendment, as I have spoken on the subject in the Committee of the Whole, I would ask that this be amended by the insertion of the word "secular" and I think that that will accomplish the result at

which we all aim. I therefore make that amendment and move that it be recommitted to the committee with instructions to amend it accordingly.

The President — The motion, as the Chair understands it, is to recommit to the Committee on Education — with instructions to amend by inserting the word "secular" before the word "education". That motion is not debatable.

Mr. Schurman — Mr. President, may I ask if we cannot by unanimous consent make this amendment now? I will accept if there is no objection on the part of my associates. I will accept it for the Committee on Education.

The President — The Chair will say that on the adoption of the motion made by Mr. Shipman to recommit the bill to the Committee on Education with instructions to amend by inserting the word "secular", and reporting forthwith, it will be self-executed, and the bill will be regarded as reported immediately upon the adoption of the motion, if it be adopted. All in favor of the motion to recommit, amend by inserting the word "secular" before the word education, and report forthwith, will say Aye, contrary, No. The motion is agreed to and the bill is before the Convention as amended. Still open to debate.

Mr. M. J. O'Brien — When this matter came up on the calendar this morning, I made a request, because, as I shall point out to the gentlemen, I hope, the danger of this amendment if in its present form it should be adopted, that this matter should go over until to-morrow morning. No time would be lost and the distinguished chairman of that Committee insisted upon pressing this proposal to a vote.

Mr. Wickersham — Mr. President, I ask that order be preserved during this discussion.

The President — The Chair will say that having been amended, it will have to be reprinted before its final adoption, it therefore will lie over until to-morrow morning. If reported it will come up on the order of third reading.

Mr. M. J. O'Brien — Mr. President, have I a right to suggest an amendment to this, which I think, instead of the word "secular" — I would ask the Chairman of the Committee, and it was with that view I am pleased to have it go over, because I do not think we will have any difference when we have a chance to confer, and that was to have the section read as follows: "The State shall continue its supervision and control of the education of children in the great common schools as a state function."

Mr. Schurman — Mr. President, may I answer that? There would be objection to that limitation, for the reason, the Committee desired to embody in the Constitution the policy of the

State as established in practice and confirmed by the courts, and I take this opportunity of calling the attention of the legal gentlemen, who constitute three-fourths of this Convention, to the opinion of the Court of Appeals in the Gunnison case. Now under the present practice the State supervises and controls to some extent the public schools, to a different extent private schools. We do not want to put any clause in the Constitution which will limit in any way the supervision and control which the State now exercises. We want that neither more nor less embodied and safeguarded in this amendment.

Mr. Clearwater — It is a great, fundamental principle, not only of this commonwealth, but of this Republic, that all of its citizens should enjoy the most unbounded and limitless civil and religious liberty. There is no greater stickler for religious liberty, in this Convention, than myself. My ancestors were exiled because of their religious belief and they came here to enjoy that religious liberty which the people of this commonwealth always have enjoyed. I speak at the request of the Chairman of the Committee on Education, of which I, myself, was a member, and during our discussion and the many hearings we gave, to educators and persons interested in the cause of education, persons desiring the introduction into the Constitution of some phase of religious education, we dismissed that phase absolutely; and because what he said upon the floor of this Convention may hereafter be referred to in construing any provision of the Constitution which the Convention shall adopt and the people confirm, now let me say, sir, that the apprehensions of my distinguished friend from New York, Governor Sheehan, possibly of Judge O'Brien, are absolutely unfounded. There was not in the mind of the Committee the slightest thought of interfering with religious education. The purpose of this amendment, sir, was to put into the Constitution a provision that the State should forever prescribe at least the minimum curriculum in the public schools of the State in so far as the secular education of the children of the State was concerned. Why, the Committee on Education recognized, sir, as every delegate on the floor of this Convention must recognize, that there is nothing dearer to the citizens of this State than religious liberty, transcending by far in the esteem of every right-minded man all rights of property and all rights of persons; and the Committee would have been derelict in its duty and the Convention would be derelict in its duty if in the slightest extent it impinged upon the sacred right of religious liberty. I am at a loss to understand these apprehensions. Surely the criticism cannot be founded upon a meticulous disposition to criticize.

Now the language is perfectly plain, although the suggested amendment of Mr. Shipman, a Regent of the University, admirably qualified to express an opinion upon the subject, would remove all question, but " The state shall continue its supervision and control of the secular education of the children of the state "— as to what the future may bring forth with regard to the conduct of the parochial schools, we know not. It is not a question that we ever have considered. I could elaborate, sir — your gavel will fall — but I think I have indicated the attitude of the Committee and its absolute freedom from even the imputation of a suspicion that it intended to insert in this Constitution anything which would limit the great right, the fundamental and inalienable right of religious education.

The President — The gentleman's time has expired. The amendment will stand over for reprinting. The Secretary will read the proposed amendments on the calendar.

The Secretary — No. 761, by Mr. Latson: To amend Section 4 of Article XI of the Constitution, in relation to the appointment of military officers by the Governor.

The President — The proposed amendment is now open to debate, under the rule — under the five-minute rule, Mr. Latson.

Mr. Wickersham — Mr. President, I ask that order be maintained in the Chamber. It is impossible to hear anything.

The President — The request is well founded. The gentlemen will suspend until the members have found their documents — and the amendment is about to be read.

Mr. Latson — I think the scope and purpose of this proposed amendment was sufficiently explained in the Committee of the Whole to make it unnecessary to repeat anything that was then said with reference to it. If there be any information sought by any delegate, the Chairman of the Committee will be very glad to respond in so far as he is able to do so. I move the adoption of the proposed amendment.

The President — Is there any other delegate who wishes to be heard on this proposed amendment? The Secretary will proceed to report the amendment.

The Secretary:—

PROPOSED CONSTITUTIONAL AMENDMENT

To amend Section four of Article eleven of the Constitution, in relation to the appointment of military officers by the Governor

The Delegates of the People of the State of New York, in Convention assembled, do propose as follows:

Section 4 of Article XI of the Constitution is hereby amended so as to read as follows:

§ 4. The Governor shall appoint aides-de-camp and military secretary and the Adjutant-General of the State, all of whom shall hold office during his pleasure, their commissions to expire with the term for which the Governor shall have been elected; he shall also nominate, and with the consent of the Senate appoint, all major-generals. The Legislature may prescribe the number and qualifications of major-generals and aides-de-camp.

The President — The question is, shall the proposed amendment to the Constitution be adopted? The Secretary will call the roll and the delegates to the Convention will answer to the call of the roll; those who wish to vote in favor of the adoption of the proposed amendment to vote Aye, those opposed, No.

Those who voted in the affirmative were: Messrs. Adams, Ahearn, Aiken, Allen, F. C., Austin, Baldwin, Bannister, Barnes, Barrett, Bayes, Bell, Berri, Betts, Brenner, Bunce, Burkan, Buxbaum, Byrne, Clearwater, Clinton, Cobb, Coles, Cullinan, Curran, Dahm, Daly, Dennis, Deyo, Dick, Donnelly, Doughty, Dow, Drummond, Dunmore, Dykman, Eisner, Endres, Eppig, Fobes, Foley, Ford, Gladding, Green, Greff, Griffin, Haffen, Hale, Harawitz, Heaton, Hinman, Johnson, Jones, Kirby, Landreth, Latson, Law, Leary, Leggett, Leitner, Lennox, Lincoln, Linde, Lindsay, Low, McKean, Mandeville, Martin, F., Martin, L. M., Marshall, Mathewson, Mealy, Meigs, Mereness, Newburger, Nicoll, D., Nixon, Nye, O'Brian, J. L., O'Brien, M. J., O'Connor, Olcott, Ostrander, Owen, Parker, Parmenter, Parsons, Pelletreau, Phillips, J. S., Phillips, S. K., Potter, Reeves, Rhees, Rodenbeck, Rosch, Ryan, Ryder, Sanders, Sargent, Saxe, J. G., Schoonhut, Schurman, Sears, Sharpe, Sheehan, Shipman, Slevin, Smith, A. E., Smith, E. N., Stanchfield, Standart, Steinbrink, Stimson, Stowell, Tierney, Tuck, Unger, Vanderlyn, Van Ness, Wadsworth, Wagner, Ward, Waterman, Weber, R. E., Weed, Westwood, Wheeler, Whipple, White, C. J., Wickersham, Williams, Winslow, Wood, Young, C. H., Young, F. L., President.

On the question of this amendment 135 votes have been cast in the affirmative and none in the negative. The proposed amendment, having received the affirmative vote of a majority of all the members elected to this Convention, is adopted. The Secretary will read the next amendment on the third reading calendar.

The Secretary — No. 794, by Mr. Latson. To amend Section 5 of Article 2 of the Constitution, in relation to the removal of commissioned officers for absence without leave.

The President — The amendment is now open for debate. The Secretary will continue to read.

The Secretary —

PROPOSED CONSTITUTIONAL AMENDMENT

To amend Section 5 of Article XI of the Constitution, in relation to the manner of election of military officers prescribed by Legislature

The Delegates of the People of the State of New York, in Convention assembled, do propose as follows:

§ 5. All other commissioned and non-commissioned officers shall be chosen or appointed in such manner and shall have such qualifications as the Legislature may deem most conducive to the improvement of the militia, provided, however, that no law shall be passed changing the existing mode of election and appointment unless two-thirds of the members present in each House shall concur therein.

The President — The question is, shall the proposed amendment to the Constitution be adopted? The Secretary will call the roll. All in favor will say Aye, opposed, No.

Those who voted in the affirmative were: Messrs. Adams, Ahearn, Aiken, Allen, F. C., Austin, Baldwin, Barrett, Bayes, Bell, Bernstein, Berri, Betts, Brenner, Bunce, Burkan, Buxbaum, Byrne, Clearwater, Cobb, Coles, Cullinan, Dahm, Daly, Dennis, Dick, Donnelly, Doughty, Dow, Drummond, Dunlap, Dunmore, Dykman, Eisner, Endres, Eppig, Fobes, Ford, Gladding, Green, Greff, Griffin, Haffen, Hale, Harawitz, Heaton, Johnson, Jones, Kirby, Kirk, Landreth, Latson, Law, Leary, Leggett, Leitner, Lennox, Lincoln, Linde, Low, McKean, Mandeville, Martin, F., Marshall, Mathewson, Mealy, Meigs, Mereness, Newburger, Nicoll, D., Nixon, Nye, O'Brian, J. L., O'Brien, M. J., O'Connor, Olcott, Ostrander, Owen, Parker, Parsons, Pelletreau, Phillips, J. S., Phillips, S. K., Potter, Reeves, Rhees, Rodenbeck, Rosch, Ryan, Ryder, Sargent, Saxe, J. G., Schoonhut, Schurman, Sears, Sharpe, Sheehan, Shipman, Slevin, Smith, A. E., Smith, E. N., Stanchfield, Standart, Steinbrink, Stimson, Stowell, Tierney,

Tuck, Unger, Vanderlyn, Wadsworth, Wagner, Ward, Waterman, Weeber, R. E., Weed, Westwood, Wheeler, Whipple, Wickersham, Williams, Wood, Young, C. H., Young, F. L., President.

The President — One hundred and twenty-four votes have been cast in the affirmative and none in the negative. Having received the affirmative vote of a majority of all the delegates elected to this Convention the proposed constitutional amendment is adopted.

The Secretary will read the title of the next proposed amendment on the third reading calendar.

The Secretary — No. 764, introductory No. 535, third reading No. 12, by Mr. Latson. To amend section 6 of Article XI, of the Constitution, in relation to the removal of commissioned officers for absence without leave.

The President — The proposed amendment is now open to debate under the rules.

Mr. Latson — Mr. President, I move the adoption of the amendment.

The President — Any further debate desired? There being no further debate, the Secretary will proceed to read the amendment.

The Secretary — The delegates of the people of the State of New York, in convention assembled, do propose as follows: Section six of article eleven of the Constitution is hereby amended so as to read as follows:

§ 6. The commissioned officers shall be commissioned by the Governor as commander in chief. No commissioned officer shall be removed from office during the term for which he shall have been appointed or elected unless by the Senate on the recommendation of the Governor, stating the grounds on which such removal is recommended, or by the sentence of a court martial or upon the findings of an examining board organized pursuant to law, or for absence without leave for a period of three months or more.

The President — The question is, shall the proposed amendment to the Constitution be adopted? The Secretary will call the roll.

Those who voted in the affirmative were: Messrs. Adams, Austin, Baldwin, Bannister, Barrett, Bayes, Bell, Bernstein, Berri, Betts, Brenner, Bunce, Burkan, Buxbaum, Byrne, Cobb, Coles, Cullinan, Curran, Dahm, Daly, Dennis, Deyo, Dick, Donnelly, Doughty, Dow, Drummond, Dunlap, Dunmore, Dykman, Eisner, Endres, Eppig, Fobes, Ford, Franchot, Gladding, Greff, Griffin, Haffen, Hale, Harawitz, Heaton, Johnson, Jones, Kirby, Kirk, Landreth, Latson, Law, Leary, Leggett, Leitner, Lennox, Lincoln, Linde, Lindsay, Low, McKean, Mandeville, Martin, F., Martin,

L. M., Marshall, Mathewson, Mealy, Meigs, Mereness, Newburger, Nicoll, D., Nixon, Nye, O'Brian, J. L., O'Brien, M. J., O'Connor, Olcott, Ostrander, Owen, Parker, Parsons, Pelletreau, Phillips, J. S., Phillips, S. K., Potter, Reeves, Rhees, Rodenbeck, Rosch, Ryan, Ryder, Sanders, Sargent, Saxe, J. G., Schoonhut, Schurman, Sears, Sharpe, Sheehan, Shipman, Slevin, Smith, A. E., Smith, E. N., Stanchfield, Standart, Steinbrink, Stimson, Stowell, Tierney, Tuck, Unger, Vanderlyn, Van Ness, Wadsworth, Wagner, Ward, Waterman, Weber, R. E., Weed, Westwood, Wheeler, Whipple, White, C. J., Wickersham, Williams, Winslow, Wood, Young, C. H., Young, F. L., President.

One hundred and twenty-nine votes in the affirmative and none in the negative. This proposed amendment having received the affirmative vote of a majority of all the members elected to this Convention is adopted. The Secretary will read the title of the next proposed amendment.

The Secretary — No. 741, introductory No. 697, third reading No. 6, by the Committee on Legislative Organization. To amend Section 6 of Article III of the Constitution, in relation to the compensation and expenses of members of the legislature.

The President — The amendment is now open to debate under the rules.

Mr. Austin — I am strongly in favor of an increase in the salaries of members of the Legislature. I believe that a majority of the people will favor a substantial increase in that salary if they are permitted to vote upon it, but I very much fear that a majority of the people will not favor the somewhat loosely drawn provisions of this proposal with reference to the payment of traveling expenses. I have taken a great deal of care to sound such public sentiment as I could reach upon that subject and I find that there is a great deal of opposition to it. I feel myself that it may be open to some considerable abuse and I feel that the increase in salary to twenty-five hundred dollars a year leaving the mileage provisions as they are now will afford a substantial measure of relief in the matter of compensation which ought in all justice to be increased, and at the same time will not leave this proposal open to attack upon the ground that it is going to open up a large and unknown source of expense to the State. For that reason, Mr. Chairman, I move to recommit the bill with instructions to amend as indicated herein and report immediately. The amendment simply strikes out the provisions with reference to the traveling expenses and restores the mileage provision in its present form.

The President — The Secretary will report the amendment offered by Mr. Austin.

The Secretary — By Mr. Austin, page 1, line 5, strike out the

bracket after the word "receive." Page 1, line 6, strike out the bracket after the word "travel" and also strike out the words in italics "their traveling;" page 1, line 7, strike out the words in italics "expenses necessarily incurred and actually paid;" page 1, line 8, strike out the brackets; page 1, line 9, strike out comma after the word "route" and insert a period; page 1, lines 9 and 10, strike out all words in italics; page 2, lines 1 and 2, strike out all words in italics.

Mr. Brackett — Mr. President, I am reminded of the boy who recited his scripture as "straining at a gnat and swallowing a saw mill." It does make me laugh, Mr. President, to see how these brethren are handling this question. If there is anybody in the State of New York who is worth a thousand dollars more a year it is a member of the Legislature. I am not against it, but I don't believe the people want it done. But, don't have any doubt about it, and you who are willing to spend fifteen thousand dollars a year for public service commissioners and who are straining at the leash to raise every judicial salary in the State, want to remember that you appear inconsistent and that you are not promoting real economy in voting against this increase. If an increase should be made anywhere, I think it should be made in the Legislature, but, as I say, I do not believe the people want it done, and if this increase is not granted, I hope it will be the forerunner of what this Convention is going to do with all salaries, but don't let it be confined to the mere microscopic increase of these figures with an absolute shutting of the eyes to the increases that are to come.

The President — Will the Secretary read the article and section as it would be if amended in accordance with Mr. Austin's amendment? Will the Convention attend to this reading, because the motion must be put without debate? The only information that the Convention can get is in the reading which is now to take place.

The Secretary — § 6. Each member of the Legislature shall receive for his services an annual salary of two thousand five hundred dollars. The members of each House shall also receive the sum of one dollar for every ten miles they shall travel in going to and returning from their place of meeting once in each session on the most usual route.

The President — The question is upon recommitting the proposed amendment with instructions to amend so that the bill will be as now read by the Secretary.

Mr. A. E. Smith — Mr. President, a question of information.

The President — The gentleman will state his request.

Mr. A. E. Smith — Is the motion to recommit and amend as indicated by the Secretary, debatable?

The President — It is not.

Mr. Dick — Mr. President, a point of information.

The President — The gentleman will state his point.

Mr. Dick — I should like to inquire of the gentleman from Greene whether he intended in his amendment to omit that part of print 741 which is found on page 2?

Mr. Marshall — Mr. President, I rise to a question of information. I understand that there have been sent to the desk a number of amendments to this measure. Would it not be proper to read all of those amendments and then to debate the general subject before we vote on any motion to recommit, so that when the members of the Convention vote, they may do so with full knowledge of the various proposals bearing upon this subject that are before us for consideration?

The President — That can only be done by motion to recommit.

Mr. J. G. Saxe — In view of the fact that no point of order has been made on which the Chair has ruled, I want to suggest that this particular point of order is debatable. The Chair will recollect that it ruled on August 4 that there was a difference between a motion to disagree simply and a motion to disagree plus something further and I think the same distinction should be drawn between a motion to recommit simply and a motion to recommit with any addendum. The only rule which I find among the rules covering this subject is No. 41, which says: "A motion may be made during the third reading of any proposed constitutional amendment to recommit it and such motion shall not be debatable." That rule, I think, relates to a class of cases where the motion simply runs to recommit the whole proposition. In that situation, the Convention has fully discussed the amendment. It is fully informed on it. There is no reason that it should be debated, and so the rule provides that it shall not be debated. Now, I don't think the same ruling should prevail where a motion is made to recommit to the Committee of the Whole with amendments, which is a different motion, because there is something which is new matter, something which the Committee has not considered in General Orders, and has not considered on third reading, and something on which the members may want to be heard on the very substance and essence of the proposed Constitution. If the Chair had already ruled on the point of order, I should not have made this suggestion; but I think it is an important one, if the Chair is inclined to go beyond the exact reading of Rule No. 41, the purpose of which is quite apparent.

Mr. Hinman — I rise to a question of information. I find that Rule 40 says that on the third reading of a proposed constitutional amendment, no amendment thereto shall be in order except

to fill blanks, without unanimous consent. Inasmuch as this seems to be a matter in which there is a very frank division of opinion which we all deem very important, both from the standpoint of those who desire to have an increase of the salary, and from the standpoint of those who fear that it would be very unpopular with the electorate, is not this a very proper occasion for us to make an exception to the rule with reference to amendments upon third reading? Instead of making a motion to recommit, with instructions to amend and report forthwith, would it not appeal to this body that application be made for unanimous consent to amend upon third reading, and to withdraw the motion to recommit, in order that we may have the debate upon the Proposed Amendment?

Mr. Austin — I have no desire to limit the debate, or to cut off debate upon this proposition. I am perfectly willing to temporarily withdraw that motion; but I think that unless something is suggested which suits me better, that amendment should have the right of way. I, therefore, temporarily withdraw the motion.

The President — The gentleman from Greene temporarily withdraws his motion to recommit, and the bill is open to debate under the five-minute rule.

The President — The Chair will say before the debate proceeds that the object of these rules is to bring the consideration of a measure to a final conclusion after full opportunity for debate, and it is with that purpose, manifestly, that the debate upon third reading is limited to one hour, speakers limited to five minutes, no member at liberty to speak more than once, and that there can be no amendments; that a motion to recommit must be decided without debate. The Chair feels bound to rule that that applies to all motions to recommit, whatever may be their character. The subject of proposed motion to recommit with instructions may be considered and discussed in the general debate in one hour. The whole subject is now open to the Convention.

Mr. A. E. Smith — Mr. President, I am willing to admit that the present wording of the amendment, "their traveling expenses," is probably not right, but I do insist to this Convention and to Mr. Austin that the important feature of this amendment is the payment of the mileage to the members, not for the sake of giving them back the money that they spend in coming here, but to make them come here. That is what I have in mind. If you want to make it three cents or two cents a mile, according to the road they travel over, when they come here every week there will be some record in the Comptroller's office that they came to Albany that week. That is the important point. It is as important as the salary increase; more so, maybe, to the business of the Legislature. Now, you men have had your own practical experience

with this situation, and your leader knows what it is to keep your men here for a full week's session. If this is put into the Constitution, it can be fixed, either by an amendment of the Legislative Law afterwards, or by rule or regulation — it can be fixed that there is a certain day to sign for the money and a certain day to receive it. If you have the book signed Monday night and sent to the Comptroller's office, and the money paid on Thursday, you will have the business of the State transacted in this room and over in the Senate. That will help to shorten the session. It will make them get down to business. At the present time you get the record of the Journal of this House, and you will find that for nearly two months at the beginning of the session there is no roll call to determine whether or not a man has been here, and after it is all over, a man can claim, "Why, I was there all the time," and you cannot show otherwise. The Journal itself is conclusive evidence or proof; he is there unless you can show that he wasn't, and you cannot show that he wasn't, but this will show it. The money cannot be paid unless he actually expended it, and if three weeks go along in succession and he has not collected his $5.75, if he lives in New York, then he hasn't been here for three weeks. Now, it is very important. I say, amend it. Make it "actual railroad expenses;" cut out the word "traveling." It was suggested to me that "traveling expenses" might mean a stop-over with lunch or an auto ride part of the way. Of course I regard that as ridiculous. The Finance Law takes care of that, and the Comptroller pays no traveling expenses now under the general item of traveling expenses except actual railroad expenses, and he requires you to keep the stub of the Pullman ticket in order to show that you did not ride in a day coach, and charge the State for a seat. What you should do is to pay him the actual price per mile. It is a very important thing, and if the Convention does not take care of it, they have neglected an opportunity that was within their reach to help the Senate and the Assembly transact their business speedily and to help them to compel their men to come here or else show to their constituencies that they did not come.

Mr. Wadsworth — What price per mile would you consider a fair price, actual cost?

Mr. A. E. Smith — Actual railroad fare.

Mr. Wadsworth — The actual charge, or ten cents per mile?

Mr. A. E. Smith — What the railroad charges, two cents a mile.

Mr. Stimson — Will the gentleman yield? Does the gentleman believe that this allowance for expenses would act any more strongly in getting the member here than it would in getting him away from here?

Mr. A. E. Smith — I don't quite get that.

Mr. Hinman — I believe that Mr. Smith is entirely right when he says that some provision should be made for traveling expenses. I offered to this Convention a proposal that there shall be monthly sessions of the Legislature, and that the members of the Legislature shall receive their actual expenses, to be audited by the Comptroller in the same manner in which he audits expenses of other State officers. Personally, I see no reason why that should not be done. A man who is a deputy or is an employee in any of the departments of the State government who goes out upon State business, has not only his railroad fare paid for him, but he has his hotel bills paid under a general rule of audit which has been established by the Comptroller's office, which fixes a certain amount which shall be payable in cities of the first class, cities of the second class, cities of the third class, and other parts of the State, for both room and board. It is a very moderate rule, and I believe that that rule might well be established for the members of the Legislature, not so much as a matter of justice to the members of the Legislature, but as a matter of interest to the State, in order, as Mr. Smith says, that there may be encouragement for the men to come to Albany and to transact the business of the State instead of putting a premium upon their staying at home.

What does a man do now? He considers that every time he comes to Albany it means dipping down into his pocket to pay his expenses while here in Albany, and he says to himself, "Is it not to my advantage, there being nothing really pressing in Albany in which I am interested, to stay home and save the twenty-five or thirty dollars it is going to cost me to go to Albany?" Therefore, let us put a premium upon coming to Albany and not upon staying at home. Let us make it an advantage to a man to come to Albany and perform the business for which he is employed and being paid by the State. The same thing is true as to mileage because when you come to consider the question under the present rule in the Constitution, which is so grossly unfair to so many members of the Legislature, it must appear to every member of this Convention that, the farther you live from Albany, the worse the rule is for you. The man who lives in Buffalo, in an average session of the Legislature, spends perhaps $300 a year, going back and forth to attend the sessions of the Legislature, whereas, the man at Albany spends nothing. The man in Rensselaer county comes across the bridge. The man in the vicinity of Albany county finds that it costs him very little, either in time or money, whereas the man living in Buffalo or New York must spend both time and money in large quantities, when you come to consider the

amount of his salary. Why, then, should there not be a rule which is equitable so far as all of the members of the Legislature are concerned? Let us consider, first of all, the reason for the rule which is now in the Constitution, and which has stood there for so many years. They have the mileage but once during the session of the Legislature. In the beginning of this country, when we first established a Legislature, the transportation facilities were such that men had to come here at the beginning of the session, stay here during the entire session, and then return home, because of the transportation facilities, because they had to come by stage coach, on horseback, over a corduroy road, with no transportation facilities. What was of the necessity of the case at that time has been changed and now we find that that which is of the necessity of the case and which we must consider is that you cannot get men to come here to Albany without making some provision for being able to return home at least at the week-ends, to transact their private business, in order that they may not starve, and may preserve themselves. Now, therefore, Mr. President, if I may have just one more moment, it seemed to me that it is not so important how much money a man receives as salary if he can accommodate his time to his business and if he can receive equitable payment in accordance with the distance that he lived from the city of Albany.

Mr. Wickersham — I voted in favor of the measure now before the House and I am in favor of increasing the salaries as proposed by that measure. I did not like very much the clause regarding expenses in that measure and if Mr. Austin's motion is renewed I shall vote for it. I think the increase in salary is proper. The present salary was fixed in 1875, forty years ago. Twenty-five hundred dollars to-day is but little more, if any, than was $1,500 then. It was fixed at a time of great financial depression, a time of far greater financial depression than we are now passing through in this country. It was fixed as an increase of over practically $300 a year which prevailed at that time and had prevailed since 1821. Now, with respect to traveling expenses, I think, with that increase of $1,000 a year, the delegates who desire to go home from time to time during the session can well afford to pay their own traveling expenses. The difficulty with the plan suggested by Delegate Smith is, while it affords an incentive to delegates to come here every Monday, it affords no incentive to them to stay after Tuesday if they do not want to. Therefore, in view of the opportunity for abuse which the general allowance for expenses seem to afford, I am inclined to think, Mr. President, that Mr. Austin's suggestion is a much better one; and that, with this substantial increase from $1,500 to $2,500 and traveling

expenses once going and once coming, we will have done substantial justice.

Mr. A. E. Smith — Mr. President, I offer the following amendment.

The Secretary — Page 1, line 7, strike out "expenses necessarily incurred and actually paid" and insert "actual cost of transportation". Line 10, strike out "expense" and insert "amount".

The President — No amendment can be made — no motion to amend can be entertained under the rule. A motion to recommit with instructions can be entertained.

Mr. A. E. Smith — If the ruling of the Chair is that the motion to recommit is not debatable, I would simply offer that as a suggestion during the discussion.

The President — It will be considered as a suggestion.

Mr. Betts — Mr. President, I voted against this measure when it was advanced to third reading. There is a great deal of force in the arguments made by Mr. Smith and Mr. Hinman, but it is a condition and not a theory that confronts us. They will not have time to present their arguments to every voter in the State, and if we remember the vote of the people on the salary amendment in 1911, and if we notice it carefully we will discover that that amendment was defeated by a larger majority than any other amendment. As I said the other day, the voters up the State were out gunning for the salary amendment and they voted "No" on all the propositions, and that is the reason why many of the propositions were defeated which ought to have carried. Now I have an amendment at the desk which strikes out the traveling expenses and reduces the salary to $2,000 instead of $2,500, which has not been read. I believe that that is all we can afford to do at this time in regard to raising the salaries. I do think that it would endanger the adoption of the Constitution if we should go any farther. Mr. President, I request that my resolution be read.

The President — The Secretary will read the amendment of Mr. Betts, withdrawn temporarily.

The Secretary — By Mr. Betts: Resolved, That the proposed amendment, Print No. 741, Int. No. 697, to recommit to the Committee on Legislative Organization with instructions to amend as follows: Page 1, line 4, strike out the word "five". Strike out in lines 5, 6, 7, 8, 9, 10, on page 1, and on page 2, all of line 1, and the words "the comptroller" on line 2.

Mr. Betts — I merely wish to call attention to an error. The word "hundred" should be stricken out. "500" should be stricken out; that is a mistake.

Mr. Barnes — In opposing this proposal the other day, I sug-

gested to the Convention that it seemed to me that inasmuch as the people in 1911 had changed this amendment, to propose it again at this time might seriously endanger the passage of the Constitution itself. That I believe. However, as suggested by Mr. Smith and by Mr. Hinman, the salary at the present time is not really equal, because of the difference in residence, in the location of the members, the distance from Albany; and that therefore, if those who believe that a salary increase should not be granted, might better vote for a proposal that will make it possible for the members of the Legislature to secure from the State their traveling expenses that they may here all be equal as far as financial treatment from the State is concerned, and that their salaries should not be increased. That proposal, I believe, would meet with the approval of the electorate, because it is fair. I therefore offer for consideration and would make the proper motion at the proper time to strike out the word "two" and insert the word "one", making the salary the same as to-day, and traveling expenses to be paid once a week.

Mr. Leggett — I want to second very heartily the distinction which Mr. Barnes has made. I do not see how any member of this Convention can defend the present provision in the Constitution for mileage. It is applicable to no set of circumstances whatever, and in behalf of the members who live in a distant part of the State, as I do, I want to say it is unfair among the members themselves. It is perhaps a matter of no great importance to members living near Albany, what this mileage rate or this expense rate is, but to a man who lives three hundred and odd miles away it makes quite a difference. Why not open our minds to real facts? This Convention has done what the members of the Legislature have done: Members have gone home, practically every week, all of them, substantially, and that will continue to be the practice of the Legislature and there is no getting away from it. The compensation of the members of the Legislature, any more than the compensation of the members of the Convention, is not sufficient so that members can afford to neglect their private business for four months at a time. Now, if that is fair, look at the position it puts the members in who reside in the western part of the State, as compared with that of those living in Albany: It is a matter of actual money out of pocket to the man living three hundred miles away. He must pay fifteen or twenty dollars each time and he cannot get along on less. He has got to do it and that has got to come out of his pocket, after getting his ten cents a mile each way. That is a matter of no consequence to a man living near Albany. If there is any part of this increase which is right and which can be defended before the people, it is this change in the question of

mileage. I have no particular choice whether it shall remain in the way it is here in the proposal or whether it should be a certain number of cents per mile each week, but it should be made a weekly proposition in some form, for otherwise it is a matter of injustice between the members themselves. It is unfair and unjust and I do not believe that the electors of the State of New York want to sanction it by any manner of means. I may say further, I am in favor of the whole increase because I do not believe the State of New York, as a matter of policy should, or that it will, make it impossible for a man of no independent fortune to come to the Legislature, because while he is here he has no means of supporting his family, and I take it that is easy for every member of the Convention to understand. I do not see how they can deny that at present the salary is practically all spent in expenses.

Mr. Westwood — When this matter was under discussion at the time the bill was in the order of second reading and in Committee of the Whole, the proposition, as we are now considering it, in third reading received the approval of an overwhelming majority of the delegates at that time present, and it passes beyond my comprehension to believe that there is actually on the part of the members who have not spoken on the floor to-day any such change of sentiment as will lead to a change in the proposal which is now up for a vote. I do not understand that conditions have changed since two weeks ago when we passed it. I do not understand that any new suggestion or argument has been advanced which is calculated to change the deliberate judgment of the members of this Convention, then formed by the fullest and most earnest debate on both sides of the question. I can only add to what has been said two suggestions which I have not heard so far made: Suppose that the increase in salary proposition was defeated in 1911, and suppose that it was defeated by the largest majority which obtained against any of the proposed constitutional amendments then submitted to the people! The conditions here are entirely different. There the legislators themselves were proposing to the people to grant them larger compensation. Here, where the matter has received certainly more of a judicial consideration by the delegates elected by the people for the purpose of passing deliberately upon this and other measures, which does not affect the delegates, the people, I think, will feel willing to repose a larger degree of confidence in the judgment that we exercise.

Now, on the question of weekly expenses. It is nothing more than fair, as was suggested. The country newspapers in the western part of the State, and the southwestern counties of the State have all favored the proposal. The legislators who have

come here in former years and who are now no longer members of the Legislature from their parts of the State, all favor it. To put it in a homely way, the salary of the member of Assembly from Chautauqua county, and the salary of the Senator from the Fifty-first Senate District, is not $1,500, as would be supposed; it is about $1,000, for you cannot keep them here all the session, if you would; it is a condition and not a theory that confronts us; the salary is virtually $1,000; while the salary of the legislator who lives in Schenectady, or in the county of Albany, or in the county of Rensselaer, is $1,500. That indicates a certain degree of inequality and unfairness which should impel this body to follow the course recommended by the Committee of the Whole.

Mr. Wickersham — I move to recommit the measure to the Committee on Legislative Organization to consider the various amendments suggested and report, the measure meantime retaining its number on the special order calendar.

Mr. Griffin — Will the gentleman withhold that motion until another amendment has been offered?

The President — Without objection the amendment will be received.

Mr. E. N. Smith — Mr. President, I would like to propose an amendment.

The President — The amendment offered by Mr. Griffin will first be received.

The Secretary — Page 1, line 5, strike out the bracket. Page 1, line 6, strike out the bracket and the words in italics "their traveling expenses necessarily incurred and actually paid." Page 1, line 10, strike out the word "expenses" and insert the word "mileage."

The President — The amendment of Mr. E. N. Smith will be received.

The Secretary — By Mr. E. N. Smith: Line 4, page 1, strike out the words "five hundred." Lines 6 and 7, strike out the words in italics and insert in the place thereof "the actual cost of their transportation." In line 10, strike out the word "expenses" and insert in place thereof the word "among."

Mr. Lindsay — Gentlemen of the Convention, having made the majority report, I think it proper before action be taken on this matter of recommendation, or anything of that sort, that I should say something upon the proposition.

The President — Will Mr. Wickersham recall that motion, to permit Mr. Lindsay an opportunity?

Mr. Lindsay — I was going to talk partly upon that motion.

The President — The motion is not debatable.

Mr. Lindsay — To recommit to a Committee of the Convention instead of the Committee of the Whole?

The President — No; the motion is not debatable. The motion however, is withheld, to permit the gentleman an opportunity to speak.

Mr. Lindsay — I have not changed, gentlemen, my opinion in regard to this matter. Perhaps I should not be averse to a slight reduction in the amount of the salary, but I do believe that the provision for compensation for expenses should be retained. I agree with what Mr. Westwood said, but I go further and when he says that the salary of the man in the western part of the State is only $1,000, I say it does not exceed $600, and in many cases it does not exceed $300. You take out the expenses of nomination, procuring his nomination papers, for the primary, all of those matters, there is a certain expense, which practically wipes out the greater part of his salary. Now it costs, to Buffalo, generally $15 for a round trip. If he makes many of those trips during the session that wipes out a large portion of his salary and makes it entirely inequitable, compared with persons residing in Albany. If I reside in the city of Albany I might be willing to serve for nothing because then I could do their business here. Lawyers can try their cases. They have done so occasionally in this Convention, while the Convention was going on, without material injury to the Convention, because they can return at any time for their committee work in the early part of the Convention. I am not attempting to reflect on any one in this matter, but I am saying it after due consideration, that you can attend to your business here, or your business in the Assembly, without material injury, any person can, because during the early part of the session they attend to committee work, and the rest of the time they are at liberty; while those members from the western part of the State are compelled to stay here from day to day or to pay out a considerable part of their salary in traveling expenses. So that, all of it, should be retained, as far as I can see, without change. Now, I do not want this bill to go back to the Committee on Legislative Organization. There is nothing that the Committee on Legislative Organization can do more than it did before after considering the matter carefully; the Committee was very slightly divided upon the proposition, and I do not believe there would be any change in the Committee. If there are to be amendments, it seems to me the proper thing would be, if it were possible, to recommit this to the Committee of the Whole, and make it a special order, get right at it, thresh out these amendments and bring it back here upon third reading if so reported.

Mr. Buxbaum — Mr. President, in the Committee on Legislative Organization I was alone in fighting for $2,000 as a proper compensation for Senators and Assemblymen. After listening to

what the gentlemen have had to say upon the floor here to-day, I am more convinced than I was then that I am right, and I have to offer the following amendment, that the Proposed Special Order be recommitted to the Committee with instructions to forthwith report back with the following changes: I propose to substitute, Mr. President, in place of the words "twenty-five hundred" the words "two thousand" and in place of the words "expenses, traveling expenses necessarily incurred and actually paid" substitute the words "the railroad fare paid by them," which will now read "the members of each house shall also receive the railroad fare paid by them in going to and returning from their place of meeting on the most usual route," etc. I offer that amendment.

Mr. Westwood — Mr. President, may I rise to a question of information?

The President — The gentleman will state his question.

Mr. Westwood — Are these papers being sent to the desk as suggestions upon the final disposition of the measure, or amendments?

The President — The Chair understands that the motion of Mr. Wickersham was withheld to permit amendments to be suggested — to go to the Committee on his motion.

Mr. Westwood — May I then suggest a proposal in the nature of an amendment which I send to the desk and I will ask the clerk to read?

The President — The Clerk will read the suggestion.

The Secretary — By Mr. Westwood: Strike out on page 1, line 4, the words "twenty-five hundred dollars" and insert "three thousand dollars."

Mr. Stimson — When this matter was before the Committee of the Whole, I voted for the amendment. An engagement in another committee had prevented me from hearing the debate, and I voted for the amendment mainly on account of its recommendation by one of the committees of this body. It seems very clearly from the debate to-day, as well as from inquiry and discussion among the members of this body, that it would be advisable to have a consideration of the different amendments that have been suggested. I have been very much impressed by the suggestion made by Mr. Barnes and Mr. Hinman and Mr. Leggett, that the fair way to do is by an equalization of the traveling expenses which are unequal in the different parts of the State. I, therefore, while Mr. Wickersham is withholding his motion, venture to express the hope that this matter be sent back to the Committee of the Whole, and that a discussion will be had there of the bill in the light of these amendments and suggestions.

The President — The Chair would advise the gentleman that

his suggestions would amount to an amendment of Mr. Wickersham's motion.

Mr. Stimson — I suggest that Mr. Wickersham's motion be amended so as to refer this back to the Committee of the Whole, so that these suggestions can be considered without the formality of a third reading here.

Mr. Wickersham — Mr. President, if that is agreeable to the Committee on Legislative Organization, I have no objection. My motion to refer to that committee was made out of courtesy to them.

Mr. Stimson — My suggestion was made also because I understood that the gentleman who spoke for the Committee preferred to have it go to the Committee of the Whole, rather than back to the Committee on Legislative Organization.

Mr. Lindsay — Mr. President, I suggested that it might go to the Committee of the Whole and be made a Special order.

The President — The question is upon the motion to recommit to the Committee of the Whole.

Mr. Hinman — Mr. President, I simply desire to offer one further suggestion.

The President — The suggestion will be received and will go to the Committee.

Mr. Wadsworth — Mr. President, and may I also submit an amendment?

The President — The suggestion will go to the Committee. The motion is to recommit to the Committee of the Whole, together with the amendments suggested. All in favor of the motion say Aye, contrary No. The Chair is in doubt. All in favor of the recommittal will rise and remain standing until counted. The gentlemen will take their seats. All opposed to the recommittal will rise and remain standing until counted. The gentlemen will be seated. The motion to recommit is adopted.

Mr. Wickersham — Mr. President, in connection with the resolution just adopted, is it in order to move that the amendments which were suggested be printed for the use of the Committee of the Whole?

The President — That may be done by unanimous consent. Is there any objection? Without objection, the amendments will be printed in accordance with the suggestion. The Secretary will read the title to the next bill on the order of third reading.

The Secretary — No. 784, by the Committee on Finance. To amend Sections 2, 4, 5, 11 and 12 of Article VII of the Constitution, in relation to debts contracted by the State.

The President — The bill is now open to debate under the rules.

Mr. Stimson — Mr. President, I think that in view of the full

debate which was taken upon that matter when it came up in the Committee of the Whole, it is only necessary for me to state that it is the amendment from the Committee on Finance in reference to serial bonds and in reference to the term of sinking funds, and I move the adoption of that amendment.

The President — Is there any debate? There being no debate, the Secretary will proceed to read.

The Secretary — Sections two, four, five, eleven and twelve of Article VII of the Constitution are hereby amended to read as follows:

Section 2. The State may contract debts in anticipation of the receipt of taxes and revenues, direct or indirect, for the purposes and within the amounts of appropriations theretofore made; bonds or other obligations for the moneys so borrowed shall be issued as may be provided by law, and shall with the interest thereon be paid from such taxes and revenues within one year from the date of issue.

Section 4. Except the debts specified in sections two and three of this article, no debt shall be hereafter contracted by or in behalf of this State, unless such debt shall be authorized by law, for some single work or object, to be distinctly specified therein. On the final passage of such bill in either house of the legislature, the question shall be taken by ayes and noes, to be duly entered on the journals thereof, and shall be: "Shall this bill pass and ought the same to receive the sanction of the people?" No such law shall take effect until it shall, at a general election, have been submitted to the people, and have received a majority of all the votes cast for and against it at such election nor shall it be submitted to be voted on within three months after its passage nor at any general election when any other law, or any bill shall be submitted to be voted for or against. The legislature may, at any time after the approval of such law by the people, if no debt shall have been contracted in pursuance thereof, repeal the same; and may at any time by law forbid the contracting of any further debt or liability under such law. Except the debts specified in sections two and three of this article, all debts contracted by the state after November second, nineteen hundred and fifteen, pursuant to an authorization therefor, heretofore or hereafter made and each portion of any such debt from time to time so contracted irrespective of the terms of such authorization, shall be paid in equal annual instalments, the first of which shall be payable not more than one year, and the last of which shall be payable not more than fifty years, after such debt or portion thereof shall have been contracted. No such debt hereafter authorized shall be contracted for a period longer than that of the probable life of the work or object for which the debt

is to be contracted, to be determined by general laws, which determination shall be conclusive. The legislature may from time to time alter the rate of interest to be paid upon any state debt which has been or may be authorized pursuant to the provisions of this section or upon any part of such debt, provided, however, that the rate of interest shall not be altered upon any part of such debt or upon any bond or other evidence thereof which has been or shall be created or issued before such alteration. The money arising from any loan creating such debt or liability shall be applied to the work or object specified in the act authorizing such debt or liability, or for the payment of such debt or liability and for no other purpose whatever.

Section 5. The sinking funds provided for the payment of interest and the extinguishment of the principal of the debts of the state heretofore contracted shall be continued; they shall be separately kept and safely invested and neither of them shall be appropriated or used in any manner other than for such payment and extinguishment as hereinafter provided. The comptroller shall each year appraise the securities held for investment in each of such funds at their fair market value not exceeding par. He shall then determine and certify to the legislature the amount of each of such funds and the amounts which, if thereafter annually contributed to each such fund, would, with the fund and with the accumulations thereon and upon the contributions thereto, computed at the rate of three per centum per annum, produce at the date of maturity the amount of the debt to retire which such fund was created, and the legislature shall thereupon appropriate as the contribution to each such fund for such year at least the amount thus certified. If the income of any such fund in any year is more than a sum which, if annually added to such fund would, with the fund and its accumulations as aforesaid, retire the debt at maturity, the excess income may be applied to the interest on the debt for which the fund was created. After any sinking fund shall equal in amount the debt for which it was created no further contribution shall be made thereto except to make good any losses ascertained at the annual appraisals above mentioned, and the income thereof shall be applied to the payment of the interest on such debt. Any excess in such income not required for the payment of interest may be applied to the general fund of the state. The legislature may also by general laws provide means and authority whereby outstanding bonds of the state, for which sinking funds are provided, may be exchanged at par for cancellation, for serial bonds of the form authorized under section four of this article, upon such terms and conditions as to interest and otherwise as it may in its discretion authorize or determine, except that the

debt as thus refunded shall finally mature no later and at no greater comparative cost to the state than the original debt; the determination of the legislature as to such comparative cost shall be conclusive. No further contributions to the respective sinking funds shall be made on account of bonds so exchanged and the proportion of any such sinking fund which the amount of the bonds so exchanged shall bear to the amount of bonds outstanding of the same issue may be appropriated, as required, for the payment of the substituted serial bonds.

Section 11. The legislature shall annually provide by appropriation for the payment of the interest upon and instalments of principal of all debts created on behalf of the state except those contracted under section two of this article, as the same shall fall due, and for the contribution to all of the sinking funds heretofore created by law, of the amounts annually to be contributed under the provisions of section five of this article. If at any time the legislature shall fail to make any such appropriation, the comptroller shall set apart from the first revenues thereafter received, applicable to the general fund of the state, a sum sufficient to pay such interest, instalments of principal, or contributions to such sinking fund, as the case may be, and shall so apply the moneys thus set apart. The comptroller may be required to set aside and apply such revenues as aforesaid, at the suit of any holder of said bonds.

Section 12. Debts hereafter authorized for the improvement of highways shall be created only in the manner provided in section four of this article. No provision of this article shall be deemed to impair or affect the validity of any debt of the state heretofore contracted or any right or obligation heretofore created between the state and any of its civil divisions.

The President — The question is on the adoption of the proposed amendment. The Secretary will call the roll.

Those who voted in the affirmative were: Messrs. Adams, Ahearn, Aiken, Allen, F. C., Austin, Bannister, Barnes, Barrett, Bayes, Beach, Bell, Bernstein, Berri, Betts, Blauvelt, Bockes, Brenner, Bunce, Burkan, Buxbaum, Byrne, Clearwater, Clinton, Cobb, Coles, Cullinan, Curran, Dahm, Daly, Dennis, Devo, Dick, Donnelly, Donovan, Dooling, Doughty, Dow, Drummond, Dunlap, Dunmore, Dykman, Eisner, Endres, Eppig, Fobes, Foley, Ford, Franchot, Gladding, Green, Greff, Griffin, Haffen, Hale, Harawitz, Heaton, Hinman, Johnson, Jones, Kirby, Landreth, Latson, Law, Leary, Leggett, Leitner, Lennox, Lincoln, Linde, Lindsay, Low, McKean, Mandeville, Martin, F., Martin, L. M., Marshall, Mathewson, Mealy, Meigs, Mereness, Newburger, Nicoll, D., Nixon, Nye, O'Brian, J. L., O'Brien, M. J., Olcott, Ostrander,

Owen, Parker, Parmenter, Parsons, Pelletreau, Phillips, J. S., Phillips, S. K., Potter, Reeves, Rhees, Rodenbeck, Rosch, Ryan, Ryder, Sanders, Sargent, Saxe, J. G., Saxe, M., Schoonhut, Schurman, Sears, Sharpe, Sheehan, Shipman, Slevin, Smith, A. E., Smith, E. N., Smith, R. B., Stanchfield, Standart, Steinbrink, Stimson, Stowell, Tierney, Tuck, Unger, Vanderlyn, Van Ness, Wadsworth, Wagner, Ward, Waterman, Weber, R. E., Weed, Westwood, Wheeler, Whipple, White, C. J., Wickersham, Winslow, Wood, Young, C. H., Young, F. L., President.

When Mr. Wagner's name was called he said: I desire to ask to be excused from voting and briefly state my reason. I merely wanted to express a regret that this Convention in the Committee of the Whole did not adopt my Proposed Amendment, so that the excess in our sinking funds may be used for the payment of interest upon our outstanding indebtedness as well as the principal. It would have relieved the taxpayers of this State of at least seven million dollars this year, and it would have corrected an inequality which now exists and an injustice which was done to the taxpayer in extracting from him this excess without reason. However, this proposed amendment is a vast improvement upon our present financial system. Therefore, I ask to withdraw my request and to be recorded in the affirmative.

The President — One hundred and forty-two votes cast in the affirmative, and none in the negative. This proposed amendment, having received an affirmative vote of a majority of all the members elected to the Convention, is adopted. The Secretary will read the title of the next proposed amendment on the calendar.

The Secretary — Number 809, by the Committee on Finance. To amend the Constitution by inserting a new article in relation to the budget, and to amend Section 21 of Article III of the Constitution.

The President — The proposed amendment is now open to debate under the rule.

Mr. Wagner — I think that Mr. Smith and myself are in accord on the proposition I am about to make. We pointed out at some length in the argument before the Committee of the Whole, the insufficiency of this budget to meet the evils which are now resident in our system, particularly that after the budget is disposed of, the flood-gates are open for all sorts of legislation, and the log-rolling that has been complained of with reference to these special appropriations for localities will be just in the same position that they are now under the present system which we are attempting to cure. Now, the Committee on Finance this morning reported a proposal which I think will cure this very evil complained of, and if that be adopted by this Convention in conjunction with this

budget proposal, you will have a greatly improved system for our appropriations. But if the proposal reported this morning be not adopted by the Convention, this budget proposal now before us will be largely ineffective and to some extent a mere sham budget. Those of us who are anxious to vote for an improvement in our present system would like to have the two proposals considered together and therefore I suggest that we defer action upon the proposal now before us until the Committee of the Whole has disposed of the report of the Finance Committee, reported this morning, so that the two of them may be considered together by the Convention, because, as a matter of fact, the consideration of one is not really intelligent without the other one along side of it. It is in order that we may have a logical argument and a disposition of the whole matter upon one debate that I propose to hold back this proposition until the Committee of the Whole has disposed of the other.

Mr. Stimson — The proposal which the Committee on Finance recommended to the Committee of the Whole this morning is perfectly independent and distinct from any of the other provisions —

Mr. Brackett — Will the gentleman speak a little louder? We cannot hear.

Mr. Barnes — Mr. President, what is the number of that proposal?

Mr. Stimson — It is not yet printed. It was recommended this morning. As I say, it is perfectly independent and distinct from the amendment provided for in the budget amendment. It amends an entirely different section of the Constitution. The budget procedure will be a perfectly sound and good procedure, as I think the debate last week showed, whether or not this new amendment is adopted; and this new proposed amendment will be a perfectly good and sound reform whether or not the budget procedure is adopted. The two are perfectly distinct and have no relation to each other, except so far as any two good measures would be an improvement to the Constitution. Therefore, I see no reason whatever in withholding action upon the budget amendment while we are waiting for the uncertain action of the Committee of the Whole upon the other amendment, and I certainly hope that that suggestion will not be pressed.

Mr. A. E. Smith — Backing up the suggestion of Senator Wagner, I am unable to agree with the chairman of the Finance Committee that the amendment reported by that Committee this morning is not related to this budget subject. Of course it amends another section, Section 20, but we follow here with Section 21. To say that the vote by which — or the manner or method of passing the very objectionable kind of appropriation bills is not

related to the question of a budget, seems to me to brush aside entirely the very thing that there has been the most complaint about. You have heard from no part of the State any great comment upon the appropriation bill as such, the actual and necessary expenses of maintaining the government. There has been no complaint about that. From that bill this year and every other year few Governors have ever taken anything and the legislative action has practically been conclusive on that subject. It is this very form of bills providing for construction — the uncertainty that the State enters into, not knowing at the time they commit themselves to an improvement what will be its ultimate cost — that is the abuse in the financial system that you should reach out to. Now the gentleman fails to remember that it is not going to be so easy to pass the bill in this Convention that prevents the small counties from helping to maintain themselves at the public expense. That is not going to be so easy, and the fact that it is not so easy affects the proposition in its position here to-day. I was given to understand that the Finance Committee was ready to put the two-thirds proposition into this bill when it was up for a hearing before — or a majority of them. Now the delegates from sections that have been benefiting by this sytem of easy money for doing all the local repair work and improving all the local property at State expense are not going to be in any great hurry to do anything that will shut it off and it is a very great mistake for this Convention to hand out half a loaf. This should be held back to bring into line the men that will be on the other side of that question. To settle this to-day and say to the people of the State "We have taken care of your financial question," does not mean anything. No one is going to believe that it accomplishes what you are looking after. Of course, the other proposition is absolutely related to it. It is the real sore spot and this should lie over until that proposition is disposed of by the Committee of the Whole, because it may influence the vote taken by the Convention on this proposition. If that is rejected, an attempt should be made before this Convention to again amend this one, but to take this one to-day, assuming that the action of the Finance Committee this morning is an indication of what is going to happen, would be a very great mistake because when this is out of your way, the boys will just get to work at the other one and lay it out — annihilate it. This having been passed, the whole question is closed.

Now if this Convention really means to do anything in the way of reform in the handling of the State finances, leave yourself in a position to do it. Keep back the power to be able to force it by holding this on the calendar, but if you are half-hearted about it, why, pass this and let the other take its chances when it comes along.

Mr. Wagner — I do not think I made a motion when I rose the last time. I desire to make a motion to postpone consideration,—

The President — The motion cannot be entertained.

Mr. Cullinan — May that bill of the Finance Committee reported this morning be read for the information of the House?

The President — The bill has not yet been printed.

Mr. Wagner — If the Chair holds that a motion to postpone to another day the consideration of a bill up for third reading cannot be entertained, I move that the bill be laid upon the table.

The President — The Chair is inclined to think that after a third reading of a bill has been commenced it is not in order to make any motion except a motion to recommit.

Mr. Wagner — Mr. President, I did not understand that the actual reading of the bill had been commenced. When the bill was called upon the calendar, I rose to address the Chair.

The President — The reading has been commenced and the condition is this: Rule 39 provides as follows: " On the third reading of a Proposed Constitutional Amendment, after the reading of the title and before the reading of the text, the Proposed Constitutional Amendment shall be open one hour, if required, for debate on its merits, before the previous quesion shall be ordered; but no member shall speak more than five minutes or more than once; the vote, however, may be taken at any time when the debate is closed ". Rule 40 provides: " On the third reading of the proposed constitutional amendment no amendment thereto shall be in order except to fill blanks, without unanimous consent ". Rule 41: "A motion may be made during the third reading of any proposed constitutional amendment to recommit and such motion shall not be debatable."

Mr. Wagner — Mr. President, does the Chair rule that a motion to lay the whole matter upon the table is out of order?

The President — He does.

Mr. Wagner — Then I move to recommit the bill.

The President — The question is upon the motion to recommit the bill.

Mr. A. E. Smith — I would like to direct the attention of the Chair to rule 37 and ask what is meant by the words: " The third reading of Proposed constitutional amendments shall take place in the order in which they have been ordered to a third reading, unless the Convention, by a vote of two-thirds of the members present, direct otherwise, or the proposed constitutional amendment to be read is laid on the table."

The President — The Chair is, of course, open to correction, and would be very glad to have any light upon the ruling, but the Chair does not consider that that applies to the situation after the third reading has begun.

Mr. A. E. Smith — Well, then, a question of information. The very minute that this was reached, Senator Wagner arose. When should he have received the attention of the Chair?

The President — The Chair cannot answer that question. The motion to lay upon the table would have been in order before the third reading was begun.

Mr. Wagner — Mr. President, the Clerk must have been unduly diligent, because just as soon as the President called up the next bill, I rose to address the Chair.

The President — The Chair will be very glad to hear argument upon that question. If any other member of the Convention considers that the ruling is not correct, the Chair would be very glad to hear it.

Mr. Wagner — Mr. President, I concede that the ruling of the Chair is correct. I did not know that the actual third reading of the bill had been commenced. It is the same procedure that we follow in the Senate; the third reading of a bill having been commenced, nothing is in order except to recommit the bill. I assumed, when I made my motion that the actual third reading of the bill had not yet commenced. The bill was only called up for third reading. If I am left powerless, under the ruling of the Chair, which is correct in view of the facts, to make any other motion, I will have to make the motion to recommit. In doing so I simply want to appeal to the members of the Convention and say that those of us who have opposed this budget as not going the full length are anxious to support the proposal if the main evil in the present system is cured. I was astonished to hear the Chairman of the Committee say that the proposal reported this morning was independent of the budget provision. Why, the meeting of the Finance Committee for the purpose of bringing out the measure now in Committee of the Whole was called after the defects of the budget system as now before us were called to the attention of the Committee of the Whole.

The President — The Chair must call the attention of the gentleman to the fact that the motion is not debatable.

Mr. Wagner — I assumed that I was proceeding under unanimous consent.

The President — The Chair will state to Senator Wagner that the title of the bill was read. The Chair announced that the bill was open for debate; the Chairman of the Committee on State Finances, Mr. Stimson, rose and moved the adoption of the bill — the motion, of course, was not necessary, but it was made,— and it was after all that that Mr. Wagner made his motion. So the Chair feels that the only motion now under consideration is the motion to recommit which must be put without debate. The

question is upon recommitting the bill. All in favor of recommittal will say Aye, contrary No. The Noes evidently have it and the motion is lost. Is there further debate under the rule?

Mr. Griffin — Mr. President, I call attention to the fact that the hour of recess has arrived.

Mr. Wickersham — Mr. President, I move that we continue in session for another half hour in order to dispose of the pending measure.

The President — Is there objection?

Mr. A. E. Smith — Before coming to the motion to sit another half hour, I would like to satisfy myself about this. The President said: "Is there further debate?" Now, if the text of the bill has been read there can be no further debate.

The President — The text of the bill has not been read. The title has been read.

Mr. A. E. Smith — Well, then, Mr. President, will the Chair indicate how Senator Wagner's motion to lay on the table is not in order if the text of the bill has not been read?

The President — The Chair will not embarrass himself by undertaking to go back to that question. If the gentlemen make any suggestions to the Chair with reference to future rulings, the Chair will be very glad to receive them. The question now is upon Mr. Wickersham's motion to extend the time for one-half hour.

Mr. Griffin — Mr. President, I make the point of order that the motion by Mr. Wickersham, involves a suspension of the rules and is not in order at this time.

The President — The point of order is not well taken. The matter of extending the session is not a suspension of the rules. All in favor of the motion —

Mr. Wickersham — Mr. President, I withdraw the motion. It seems to be the desire of a larger part of the House not to continue.

The President — The motion is withdrawn and the Convention stands in recess until half-past two this afternoon. Whereupon, at 1:10 p. m., the Convention took a recess until 2:30 p. m. of the same day.

AFTER RECESS — 2:30 P. M.

Mr. Cullinan — Mr. President, I would like to ask unanimous consent to withdraw a bill that has been introduced. In bill, Introductory No. 576, introduced by me, providing for the —

The President — The Chair does not think that he is at liberty to entertain any matter but this order.

Mr. Cullinan — I just wanted to conserve the time, Mr. President.

The President — It may be taken up at the conclusion of this order. The pending amendment is still open to debate. The Chair wishes to say that he has become satisfied that the reading of the title does not constitute a part of the third reading of the bill and that, therefore, after the reading of the title and before the reading of the text during the hour which is allotted for debate on the merits, the motions pertinent to Rule 37 may be made, as well as the motion to recommit referred to in Rule 41. That would include the motion to postpone, requiring two-thirds vote, and the motion to lay upon the table. The bill is before the Convention and open to debate.

Mr. Wagner — Then I take it, Mr. President, the motion which I made just before recess, which the Chair declared out of order, is in order.

The President — It is in order.

Mr. Wagner — I only wish to say this, I ask to withdraw my motion, and I shall not interpose any other motion which will postpone consideration of the proposal now before us. I am of the opinion, Mr. President, that unless we adopt the other proposal reported by the Committee on Finance, the provision which we are now considering, if adopted, will not be very effective; but I shall rely upon what I believe is the judgment of the large majority of this body, that that other proposal should be adopted, that the budget proposal now before us and rely upon the adoption of the proposal now in General Orders. I withdraw my motion and will support the proposal.

Mr. Stimson — If Mr. Wagner will yield for a statement, I wish to state that it was my intention to ask to have the other proposal made a special order as promptly as possible, as promptly as such an order can be made by the Rules Committee.

Mr. Barnes — Mr. President, there is one angle of this bill which opens and has opened it to real and considerable criticism. That is the proposal that the Legislature may initiate legislation after the adoption of the budget. No one can foretell surely what the effect of so radical a change in the making of the appropriations of the State will be, because of this amendment, if adopted here and sanctioned by the people. I venture to make the prediction, however, that the fears that have been expressed by Mr. Smith and others, as to what the action of the Legislature will be on supplemental bills, are unfounded. By this proposal we place the authority of appropriations upon the administrative branch of the government and hold it responsible. It is necessary for it then to go to the Legislature with its proposition, the budget. There it is reviewed, criticised and finally sanctioned

or reduced. After that procedure has been gone through with and everyone knows what the budget of the State is to be for the coming year beginning July 1st, it will be a political issue before the people as to what additional provisions the Legislature may pass. The Legislature, for its own protection, having been relieved by this proposal of all of the criticisms which have been leveled at it in the past,— that having been transferred to the administrative part of the government — will hardly desire to enter upon a period of expenditure additional to the budget, for which it will be entirely responsible. You will see the leaders of political parties, unquestionably, on both sides contending against additional appropriations. It may be said that this proposal of legislative initiation later is unnecessary. That was my opinion when I came to this Convention, but I was shown by some of the delegates how a prohibition of all initiative upon the Legislature would make it possible for a Governor elected, we will say, in 1914, to nullify the laws of the State passed the year before he became Governor, by refusing to initiate appropriations to execute them. This, of course, would put him under the ban of failure to execute the laws and he might be impeached, but we cannot write into the Constitution a provision which would make it possible for the executive to nullify the laws of the State passed by the Legislature and signed by another Governor. I therefore believe that those who have fears as to what the Legislature may do subsequent to the passage of the budget are living in the thought of something that will not occur, and that only such appropriations as will be generally agreed to by the entire people of the State as being fit and proper and necessary will be passed. If that prediction is not true, I will venture the further prediction that the political party which is not in control of the Legislature will make that the dominant issue as against the other party.

Mr. Burkan — The brilliant Chairman of the Committee on State Finances in opening the debate in the Committee of the Whole on this proposition stated that the system of legislative initiation of financial bills was a prolific source of log-rolling, legislative graft and extravagance; that no responsibility is fixed upon any officer of the State concerning State finances. He did not use this exact language, but this is the substance of what he said: As I understand it the bill before the House was aimed to correct this evil. If the system now in vogue is vicious then why continue the system in part? Why give the Legislature any power to initiate any financial legislation? I read his excuse. He said that when the proposal was before the Committee it was urged that the power to initiate financial legislation should vest entirely in the Governor; that he should submit his budget, and the budget

should contain a plan of the entire financial policy of the State; but it was urged also that the Governor through prejudice against some institution, or some part of the State, might deliberately set out to starve that institution or that function. Second, that he might enter into some deal looking to the accomplishment of these ends. Third, that he might seek to block some function or activity becoming necessary in the development of civilization for which there is a public demand. I am unwilling to believe that any Governor elected to this high office would be so derelict in his duty that he would violate his oath of office, and refuse to carry out the wishes of the people concerning the administration of the business of the State. I am opposed to giving constitutional expression to the idea that we cannot trust the men whom we elect to the office of Governor. I am unwilling to believe that any Governor would in opposition to the wishes of the people refuse to sanction any great reform, or who would refuse to give his support to any great reform. I am unwilling to believe that any Governor could be found who would not give his hearty support to such a project and in his budget would fail to include the funds necessary for the carrying out of the project. If we are going to enact reform here let us be real reformers. Don't let us be throwing out sops to the politicians. Let us be fair and frank. If it is good, it is good. If it is bad in part the whole of it is bad. Don't divide the responsibility. Don't continue in part the system of log-rolling and the system of legislative graft. You denounced it here on the floor of this House. If it is bad and vicious, do away with it, uproot the evil and totally destroy it.

I do not see how you can go before the people of this State and say this reform, this budget system, is necessary, because of legislative graft, because it leads to corruption, because it is conducive to the plundering of the State treasury, and then in the same breath say we have in this very Constitution provided that after the budget is submitted to the Legislature and after they have passed upon that budget and made the appropriate appropriations, then we permit the Legislature, by initiating further appropriation bills, to re-enact the scandals of log-rolling and legislative graft. Let us put a stop to it. Don't let any Governor under the guise of economy submit a budget which would not include all items necessary for new activities of the State. Don't, after his budget plan goes through, let him, in concert with the leaders of the Legislature institute a number of necessary reforms, leaving to the Legislature to assume the responsibility for the financial policy of the necessary reforms and then when the Governor comes up for election, although he refuses to bear the financial burden of the reform let him claim all the credit for the reform. Let us put the duty and obligation where it belongs. Don't divide the

responsibility. If you want a budget, vest the duty of preparing it either on the Legislature or on the Governor. Let the entire financial policy of the State be confided to but one body. The duty and obligation therefor should not vest in both.

Mr. Cullinan — Gentlemen, on every occasion when I have had to discharge any official duty in this Convention I have tried to keep in view the three separate departments, the executive, the legislative and the judicial. I have taken the position with reference to this bill, generally speaking, that it retains in the Legislature the power that it has always had of making appropriations and entitled to do so because it imposes the tax. Now, the preliminary work with reference to obtaining through the instrumentality of the Governor and the other officers the amount of appropriations which are necessary to meet the fixed expenditures of the State is merely a matter of bookkeeping, and I can see no impropriety, I can see no invasion of the rights of the Legislature, in the announcement coming from the Governor that it is going to cost so much money to run the State as far as fixed expenses are concerned and notifying the Legislature at the same time the amount of assets and liabilities of the State. Now, if this bill violates any of the rule with reference to the three departments of State, it rather gives the Legislature more power than it ever had before, in this way, that it says, here "Neither House shall consider other appropriations until the appropriation bills proposed by the Governor shall have been finally acted on by both Houses." Now, it does not state what kind of action, whether they shall nullify the proposals forwarded by the Governor and submitted to the Legislature, or whether they shall approve of the character of the action which the Legislature may take. Then the Legislature is not only at liberty under this bill to make all further appropriations, provided they come within its provisions as being separate bills, but it has a power it never had before to call the Governor of the State before it and examine him as to his attitude upon the appropriation bill which he submitted. Now, that is a great power, an unusual power, and perhaps under the circumstances the Governor presents to the Legislature a bill for the expense of government as far as fixed expenses are concerned. It is entirely right that the advantage he has in that respect shall meet with the reciprocal check of the Legislature to call him before it to make explanations.

Now, with regard to another matter — is Speaker Smith here? As a member of this Convention and coming from the up state, I desire to enter my protest at this time against the language of the gentleman this morning, and it is language which is continually repeated when all matters of support of the State government are

concerned that the up counties of this State are being maintained at the public expense. Now I want to protest against that statement made so frequently by certain of the gentlemen of this Convention from the city of New York, because that fact is not so. They point occasionally to a small appropriation and in that particular language, to lead this Convention to suppose those appropriations are unjustified, whereas I have not seen any of those appropriations mentioned — I have not seen them present any proof to this Convention that they are unjustified. Now, I desire to state to this Convention that the up-State counties are doing more for the localities that these gentlemen represent than they have been willing to concede, but which the facts will support. We are raising — we have taxed this State to an extent of $130,000,000 for the Barge Canal, and if the referendum passes this fall, we shall have taxed the State $160,000,000. Now, one-fourth of that is contributed, at least, by the up-State counties — very nearly that. So we shall have — if the referendum passes, we shall have taxed ourselves for $40,000,000 — for whose benefit? Now, nobody has ever questioned that the great beneficiary of the Barge Canal improvement is the city of New York, represented by these gentlemen who continually asseverate that the up-State is being maintained at the public expense.

The President — The Chair regrets to call attention to the time. Is there any objection to an extension of time?

Mr. Cullinan — I would like to add a few more sentences.

The President — The Chair hears no objection.

Mr. Cullinan — Well, gentlemen, the fact is this: The Barge Canal, when it carries its cargoes of grain from the great Northwest to the city of New York, it passes the fertile fields of the residents of the up-State counties, and they do not look upon this competition with the composure that you might expect, or actually exists. They find that the State of New York, by these large appropriations, of which they have contributed one-fourth, are bringing to the markets of the city of New York, without expense, a competitor who brings down the value of their commodities and the products of their field; so I say that I trust that the gentlemen who are continually making these remarks about up-State being maintained at the public expense, will remember that up-State is paying,— taxing itself for forty millions of dollars in the construction of the Barge Canal, the chief beneficiary of which is the city of New York.

Mr. A. E. Smith — In speaking on this proposed proposition before, I argued from the angle of delay until such time as the other amendment reported from the Finance Committee cou'd be its companion on the calendar. I am given to understand, however, that the Committee on Rules proposes making that a special

order, and therefore I am content that this have its way to-day to be acted on, on final third reading. I am satisfied that this goes as far as — goes a long distance in the right direction. And I want to take advantage of a minute or two to inform my good friend from Oswego that if New York city is getting the great benefit of the $150,000,000 for the canal, New York was obliged to come back and give $100,000,000 for the roads, of which it gets nothing.

Mr. Cullinan — I would like to answer that.

Mr. A. E. Smith — I know. The only way to answer that is to show me where we get some roads out of the hundred million. That is the only answer. It is the only statement I make. It is the only thing you could answer. We get nothing of that hundred million, and we never have a bridge built in our city at public expense over any river or any creek or any driveway, or any other part of the city, and Oswego has had six of them in five years. That is the answer to it. I want the gentleman from Oswego to understand that I am not against the Legislature initiating the type of appropriation bill that I find fault with. I oppose the motion to amend the bill made by Mr. Nicoll which would have required the two-thirds vote on all bills. I am simply trying to put the Legislature, if you will, in some kind of a position to know how to deal, and how to intelligently deal, with the requests that come from localities for bridges, creek-cleaning and farm bridges and the widening and straightening of creeks and the building of dykes and the fixing of walls and all this kind of thing that is unquestionably for the benefit of one locality, even though in its broad sense the courts or somebody else may declare it to be a State-wide purpose. That is all I am getting at.

Mr. Cullinan — Mr. President, I would like unanimous consent to answer the gentleman for two minutes.

The President — Is there objection to Mr. Cullinan having two minutes to answer the last speaker? The Chair hears none.

Mr. Cullinan — Now, Mr. Speaker, you admitted the other day that the Minetto bridge was built properly — that the $50,000 appropriation was a legitimate appropriation on the part of the State for the partial construction of the Minetto bridge because it was over the canal. Now every one of those six bills that you have mentioned for the six bridges has been precisely like the Minetto bridge bill — a public expense for bridges over locks and over the canal, over which no one has any jurisdiction or control except the State of New York.

The President — Is there any further debate upon the bill? If there is no further debate, the Secretary will read the text of the bill.

The Secretary —

PROPOSED CONSTITUTIONAL AMENDMENT

To amend the Constitution, by inserting a new article, in relation to the budget, and to amend Section twenty-one of Article three of the Constitution.

The Delegates of the People of the State of New York, in Convention assembled, do propose as follows:

To amend the Constitution by adding a new article to read as follows:

Section 1. On or before the fifteenth day of November in the year nineteen hundred and sixteen and in each year thereafter, the head of each department of the State government except the Legislature and Judiciary, shall submit to the Governor itemized estimates of appropriations to meet the financial needs of such department, including a statement in detail of all monies for which any general or special appropriation is desired at the ensuing session of the Legislature, classified according to relative importance and in such form and with such explanation as the Governor may require.

The Governor, after public hearing thereon, at which he may require the attendance of heads of departments and their subordinates, shall revise such estimates according to his judgment. Itemized estimates of the financial needs of the Legislature certified by the presiding officer of each House and of the Judiciary certified by the comptroller shall be transmitted to the Governor before the fifteenth day of January next succeeding for inclusion in the budget without revision, but with such recommendation as he may think proper. On or before the first day of February next succeeding he shall submit to the Legislature a budget containing a complete plan of proposed expenditures and estimated revenues. It shall contain all the estimates so revised or certified and shall be accompanied by a bill or bills for all proposed appropriations and reappropriations, clearly itemized; it shall show the estimated revenues for the ensuing fiscal year and the estimated surplus or deficit of revenues at the end of the current fiscal year together with the measures of taxation, if any, which the Governor may propose for the increase of the revenues. It shall be accompanied by a statement of the current assets, liabilities, reserves and surplus or deficit of the State; statements of the debts and funds of the State; an estimate of its financial condition as of the beginning and end of the ensuing fiscal year, and a statement of revenues and expenditures for the two fiscal years next preceding said year, in form suitable for comparison. The Governor may

before final action by the Legislature thereon, amend or supplement the budget. A copy of the budget and of any amendments or additions thereto shall be forthwith transmitted by the Governor to the Comptroller. The Governor, the heads of such departments and the Comptroller shall have the right, and it shall be their duty, when requested by either House of the Legislature, to appear and be heard in respect to the budget during the consideration thereof, and to answer inquiries relevant thereto. The procedure for such appearance and inquiries shall be provided by law. The Legislature may not alter an appropriation bill submitted by the Governor except to strike out or reduce items therein; but this provision shall not apply to items for the Legislature or Judiciary. Such a bill when passed by both Houses shall be a law immediately without further action by the Governor, except that appropriations for the Legislature and judiciary shall be subject to his approval as provided in Section 9 of Article IV. Neither House shall consider further appropriations until the appropriation bills proposed by the Governor shall have been finally acted on by both Houses; nor shall such further appropriations be then made except by separate bills each for a single work or object, which bills shall be subject to the Governor's approval as provided in Section 9 of Article IV. Nothing herein contained shall be construed to prevent the Governor from recommending that one or more of his proposed bills be passed in advance of the others to supply the immediate needs of government.

Section 21 of Article III of the Constitution is hereby amended so as to read as follows: Appropriation bills. § 21. No money shall ever be paid out of the treasury of the State or any of its funds, or any of the funds under its management, except in pursuance of an appropriation by law; nor unless such payment be made not later than three months after the close of the fiscal year next succeeding that in which such appropriation was made; and every such law making a new appropriation or continuing or reviving an appropriation, shall distinctly specify the sum appropriated, and the object to which it is to be applied; and it shall not be sufficient for such law to refer to any other law to fix such sum. Appropriations made by the Legislature in the year nineteen hundred and sixteen shall be made for a period ending June thirtieth, nineteen hundred and seventeen, and thereafter the fiscal year of the State shall end on June thirtieth of each year, unless otherwise provided by law.

The President — The question now is, shall the Proposed Amendment be adopted. The Secretary will call the roll.

Those who voted in the affirmative were: Messrs. Adams, Ahearn, Aiken, Allen, F. C., Austin, Baldwin, Bannister, Barnes,

Barrett, Bayes, Beach, Bell, Bernstein, Berri, Betts, Bockes, Brenner, Bunce, Burkan, Buxbaum, Byrne, Clearwater, Clinton, Cobb, Coles, Cullinan, Curran, Dahm, Daly, Dennis, Deyo, Dick, Donnelly, Doughty, Dow, Drummond, Dunlap, Dunmore, Dykman, Eisner, Eppig, Fobes, Foley, Ford, Gladding, Green, Greff, Griffin, Haffen, Hale, Heaton, Hinman, Johnson, Kirby, Kirk, Landreth, Latson, Law, Leary, Leggett, Lennox, Lincoln, Linde, Lindsay, Low, McKean, Mandeville, Marshall, Martin, F., Martin, L. M., Mathewson, Mealy, Meigs, Newburger, Nicoll, C., Nicoll, D., Nixon, Nye, O'Brian, J. L., O'Brien, M. J., O'Connor, Olcott, Owen, Parker, Parmenter, Parsons, Phillips, J. S., Phillips, S. K., Potter, Quigg, Reeves, Rhees, Rodenbeck, Rosch, Ryan, Ryder, Sanders, Sargent, Saxe, J. G., Saxe, M., Schoonhut, Schurman, Sears, Sharpe, Sheehan, Shipman, Slevin, Smith, A. E., Smith, E. N., Smith, R. B., Stanchfield, Steinbrink, Stimson, Stowell, Tierney, Tuck, Unger, Vanderlyn, Van Ness, Wadsworth, Wagner, Ward, Waterman, Weber, R. E., Weed, Westwood, Wheeler, Whipple, White, C. J., Wickersham, Williams, Winslow, Wood, Young, C. H., Young, F. L., President.

Those who voted in the negative were: Messrs. Brackett, Dooling, Endres, Ostrander.

When Mr. Griffin's name was called he said: I ask to be excused from voting long enough to explain my vote. I believe that this measure is a great step in advance and the Committee deserves commendation for the scheme which they have worked out. However, I am against one proposition contained in this measure, and that is the one which gives such great power to the Governor of the State. I do not believe that the executive of the State should have the right practically to initiate a budget. It was, perhaps, not right to confine the initiation of the budget to the Legislature. I believe that the true course would be a middle one between the two. I believe that the Committee in carrying out their scheme should have provided for an audit board composed of disinterested persons to pass upon these requests for appropriations for the respective departments. The power which is given to the Governor is a dangerous one, especially when we contemplate that it is perhaps the purpose of this Convention, and it is agreeable to me that it should be done, that the term of the Governor will be lengthened to four years. With that increased term and with the increased powers which will necessarily flow to the executive, I think it is a great mistake to give him the additional power or ability to initiate the budget and by so doing enable him to carry on log-rolling, or furnish him the opportunity, perchance, of accomplishing that which may not be for the best interests of the State. Nevertheless, the advance is so great over

the old system that I withdraw my request to be excused from voting and vote in the affirmative.

When Mr. Quigg's name was called he said: I ask a second to explain my vote. I have a grudge against this bill, that it allows the Legislature to subpoena the Governor. I don't like that feature of it and I want to record a final objection to it. But, sir, there was a never more signal instance of fairness in debate and in opportunity to amend than was afforded in this convention on this bill. We had the best chance to do with it what anybody wanted, and I failed in what I wanted, but in the principle of the bill, except for that one thing, I believe, and I withdraw my request to be excused and I vote Aye.

When Mr. J. G. Saxe's name was called he said: Mr. President, I wish to explain my vote. This proposed amendment is substantially the proposed amendment which I introduced and have advocated both before the Finance Committee and throughout the State with the single exception, that it contains a provision for imposing a new duty on the Governor, that he must on request of either House of the Legislature appear and answer inquiries relative to the budget. I want to say again, as I said in General Orders, as emphatically as I can, that I regard this clause as utterly unwise. This proposed amendment gives jurisdiction to the Legislature superior to that of the executive and in so doing it violates all the traditions of American government which is so firmly based upon the theory that the executive, legislative and the judiciary shall maintain their separate sovereignty. I am not like one of those who would make the Governor a czar, yet on the other hand I emphatically protest against the constitutional invitation to mob-rule of either House of the Legislature. Since this bill was advanced to third reading a dozen people have said to me, give me a seat in the Legislature and I will ruin the reputation of any Governor of different political complexion and I maintain that this objectionable provision opens the door to cross-examination, fishing excursions, heckling and positive insult. Now I am so much in favor of the budget scheme that when I vote to-day I feel I must vote in the affirmative and yet all of us have to take into consideration before we vote on election day the good, or the constructive things in the Constitution and the destructive parts of the Constitution. I hope the former will largely outweigh the latter, that we may all be able to vote and advise our friends to vote in favor of the Constitution. Yet, when we come to sum up and put the constructive things on the right hand side of the ledger and the destructive things on the left side of the ledger I feel that this one, positively unwise, provision must be on the wrong side of the ledger. With that explanation I vote Aye.

When Mr. M. Saxe's name was called he said: Mr. President, I wish to explain my vote. I echo the same sentiments expressed by the previous speaker with respect to the provision affecting the Governor, in bringing him into the presence of the Legislature on the budget. However, I realize that it is next to impossible to perfect any article, any proposed amendment to the Constitution so as to please everybody in every particular. I withdraw my request and vote Aye.

When Mr. Green's name was called he said: Mr. President, I desire to change my vote from the negative to the affirmative. My reason for voting in the negative was that I did so to emphasize the suggestion I made the other day on the floor, that I did not believe the Legislature ought to have the power to summon the Governor under any consideration of this kind.

At the conclusion of the roll call Mr. Brackett said: Mr. President, I ask to withdraw my vote long enough to call the attention of the Republican members of the Convention to the fact that this privilege of the Governor coming before the Legislature and, in effect, participating in the debates, was one that was proposed as part of the platform of the Republican Convention in 1914. Upon a dissent being made in the committee, the clause was specifically stricken out and was not put in to form a part of the platform as adopted by the Convention. I hope that hereafter one of two things will happen: Either that we will not be asked to be bound by any provision of the Republican platform, or else that the gentlemen who have voted for this measure which will permit the Governor to come before the Legislature and, in effect, participate in the debates and dragoon the Legislature as best he can — I hope that at least those members will apologize for having violated the platform of their party or will not find any fault with those of us who perhaps may violate it some more. I vote No.

The vote is 137 in favor, and 4 in the negative. This Proposed Amendment to the Constitution, having received the affirmative vote of a majority of all the members elected to the Convention, is adopted. The Secretary will read the title of the next Proposed Amendment on the third reading calendar.

Mr. Low — May I ask the members of the Cities Committee to adjourn to the Cities Committee room, in order that we may carry forward, and I hope complete, the duty laid upon us to report to-morrow morning?

The President — The Chair will call the attention of the chairman of the Cities Committee to the fact that on the order of third reading the necessity of attendance on the part of all members of the Convention is apparent for the reason that the affirmative vote of a majority of all the members elected to the Convention is required before an amendment can be adopted.

Mr. Low — I should be very glad to remain, Mr. President. I hope the members of the Cities Committee will meet as soon as we are out of the order of third reading.

The President — The Secretary will read the title of the next bill.

The Secretary — No. 800, by Mr. R. B. Smith. To amend Section 28 of Article III of the Constitution, in relation to the granting or allowing of extra compensation by legislative bodies or auditing boards, bodies or officers.

The President — The Proposed Amendment is open for debate. Does any gentleman desire to debate the amendment, the title of which has been read? If not, the Secretary will continue to read.

The Secretary —

The Delegates of the People of the State of New York, in Convention assembled, do propose as follows:

Section 28 of Article III of the Constitution is hereby amended to read as follows:

Section 28. No extra compensation shall be granted or allowed to any public officer, servant, agent or contractor, by the State or any civil division thereof or by any board, officer or other agency of the State, or of any such civil division.

The President — The question is upon the adoption of the Proposed Amendment. The question is shall the amendment be adopted. The Secretary will call the roll.

Those who voted in the affirmative were: Messrs. Adams, Ahearn, Aiken, Baldwin, Bannister, Barrett, Bayes, Beach, Bell, Bernstein, Berri, Betts, Bockes, Brackett, Bunce, Burkan, Buxbaum, Byrne, Clearwater, Clinton, Cobb, Coles, Cullinan, Curran, Dahm, Daly, Dennis, Deyo, Dick, Donnelly, Donovan, Doughty, Dow, Drummond, Dunlap, Dunmore, Dykman, Eisner, Endres, Eppig, Fobes, Foley, Ford, Gladding, Green, Greff, Griffin, Haffen, Hale, Heaton, Hinman, Johnson, Jones, Kirby, Kirk, Landreth, Latson, Law, Leary, Leggett, Lennox, Lincoln, Linde, Lindsay, Low, McKean, Mandeville, Martin, F., Martin, L. M., Marshall, Mathewson, Mealy, Meigs, Mereness, Newburger, Nicoll, D., Nixon, O'Brian, J. L., O'Brien, M. J., O'Connor, Olcott, Owen, Parker, Parmenter, Parsons, Phillips, J. S., Phillips, S. K., Quigg, Reeves, Rhees, Rodenbeck, Rosch, Ryan, Ryder, Sanders, Sargent, Saxe, J. G., Saxe, M., Schoonhut, Schurman, Sears, Sharpe, Shipman, Slevin, Smith, E. N., Smith, R. B., Stanchfield, Steinbrink, Stimson, Stowell, Tierney, Tuck, Unger, Vanderlyn, Van Ness, Wadsworth, Wagner, Ward, Waterman, Weber, R. E., Weed, Westwood, Wheeler, Whipple, White, C. J., Wickersham, Williams, Winslow, Wood, Young, C. H., Young, F. L., President.

Those who voted in the negative were: Messrs. Austin, Dooling, Ostrander, Potter.

When Mr. Austin's name was called he said: Mr. President, in view of the uncertainty which exists in my mind as to what is meant by the words "extra compensation"— the doubt which exists in my mind as to whether or not the adoption of this proposal might not prevent an allowance to a contractor upon State or municipal work of a reasonable sum for work performed where the plans are changed under which he took the contract — I feel I must vote No.

When Mr. Steinbrink's name was called he said: I desire briefly to explain my vote. Because of the suggestion made by Delegate Austin and because the same doubt existed in my mind, I called to the attention of the leading members of this Convention a case in which this question was raised quite recently in the Court of Appeals. As I read this, while prohibiting extra compensation for either work or services, it will not prohibit compensation for extra work or extra service. In addition, as I understand it, it will not prohibit a contractor who, under threat or compulsion is called upon to perform work outside of his contract,— it will not prohibit him from recovering compensation by way of damages for that breach of contract. I desire to vote Aye.

The President — The vote is 132 in the affirmative, 4 in the negative. The proposed amendment having received the affirmative vote of a majority of all the members elected to this Convention is adopted. The Secretary will read the title of the next proposed amendment on the calendar.

The Secretary — No. 799, third reading No. 13, by Committee on Relations to Indians. To amend section 15 of article 1 of the Constitution of the State of New York, in relation to Indians.

The President — The proposed amendment is open to debate. Is there any gentleman who desires to debate the amendment?

The Secretary will read the text.

The Secretary —

The Delegates of the People of the State of New York, in Convention assembled, do propose as follows:

Section fifteen of article one of the Constitution is hereby amended to read as follows:

Section 15. No purchase or contract for the sale of lands in this State, made since the fourteenth day of October, one thousand seven hundred and seventy-five; or which may hereafter be made of, or with the Indians, shall be valid unless made under the authority, and with the consent of the Legislature. The Peacemakers' Courts of the Tonawanda nation, the Peacemakers' Courts and Surrogates Courts of the Seneca nation and all other agencies of the Indian tribes and nations so far as they exercise

judicial functions are hereby abolished, and their jurisdiction shall vest in the courts of the State. All actions and proceedings now pending in such courts and agencies of the Indian nations and tribes shall be transferred for determination to the proper courts of the State. Except as otherwise provided by the treaties of this State and the Constitution, treaties and laws of the United States, all general laws of the State now or hereafter in force, shall apply to all Indians within the State. The Legislature shall provide for the preservation of the judicial records of the Indian tribes and nations.

The Secretary will call the roll.

Those who voted in the affirmative were: Messrs. Adams, Aiken, Allen, F. C., Austin, Baldwin, Bannister, Barrett, Bayes, Beach, Bell, Bernstein, Berri, Bockes, Brenner, Bunce, Burkan, Buxbaum, Byrne, Clearwater, Clinton, Cobb, Coles, Cullinan, Curran, Dahm, Daly, Dennis, Deyo, Dick, Donnelly, Donovan, Dooling, Doughty, Dow, Drummond, Dunmore, Dykman, Eisner, Endres, Eppig, Fobes, Foley, Ford, Gladding, Greff, Haffen, Hale, Heaton, Hinman, Johnson, Jones, Kirby, Kirk, Landreth, Latson, Law, Leggett, Lennox, Lincoln, Linde, Lindsay, Low, McKean, Mandeville, Marshall, Martin, F., Martin, L. M., Mathewson, Mealy, Meigs, Mereness, Newburger, Nicoll, D., Nixon, Nye, O'Brian, J. L., O'Brien, M. J., Olcott, Ostrander, Owen, Parker, Parmeter, Parsons, Phillips, S. K., Potter, Quigg, Reeves, Rhees, Rodenbeck, Rosch, Ryan, Ryder, Sanders, Sargent, Saxe, M., Schoonhut, Schurman, Sears, Sharpe, Sheehan, Shipman, Slevin, Smith, E. N., Smith, R. B., Stanchfield, Steinbrink, Stimson, Stowell, Tierney, Tuck, Unger, Vanderlyn, Van Ness, Wadsworth, Wagner, Ward, Waterman, Weber, R. E., Weed, Westwood, Wheeler, Whipple, White, C. J., Wickersham, Williams, Winslow, Wood, Young, C. H., Young, F. L., President.

The Secretary — The vote is 130 in the affirmative. None recorded in the negative.

The President — The Proposed Amendment having received the affirmative vote of a majority of all the members elected to this Convention is adopted.

The Secretary will read the title of the next Proposed Amendment on the calendar.

The Secretary — Third reading No. 4, Print No. 798, by Mr. R. B. Smith. To amend article 3 and section 4 of article 4 of the Constitution, in relation to voluntary sessions of the Legislature and the Assembly.

The President — The amendment is open to debate.

Mr. Marshall — I was in favor of this provision when it was voted upon in Committee of the Whole. My purpose in rising to-day is not to renew the discussion in which I then engaged.

It is merely to call attention to what I feel is an unfortunate phrase which is used twice in this provision. On line 5, of page 1, there is used the expression "continuing rule," so that "the legislature may of its own motion, in the manner to be provided by continuing joint rule, convene to take action in the matter of removal of a judge of the court of appeals" etc., etc. I do not find anywhere in our political history any such creation as a "continuing joint rule." Article III of the Constitution, in section 10, is, so far as I know, the only constitutional provision which deals with the subject of rules. That reads as follows: "Each House shall determine the rules of its own proceedings." There is, therefore, such a thing as a Senate rule and a House rule, but not a joint rule or a continuing joint rule. I understand that the rule of the House is only enforced during each session of that House or rather during each session of the Senate and each annual session of the Assembly.

It would seem to me that the only proper and safe term to use in this connection is that there should be a law passed which should deal with this subject, so that the provision should read, "The Legislature may of its own motion in the manner provided by law, convene," etc. I do not really know what sanction there would be for a continuing rule unless this provision in itself would grant such sanction, and so far as I have any knowledge of parliamentary procedure this is apparently the first creation of this kind known. I may be mistaken in that respect, but so far as I have been able to give the subject personal examination in the time that I have had to make the special investigation it raises, in the past few weeks, I do not find that there is any phrase used anywhere. Merely for the purpose of indicating the care which must be taken or which is called for in respect to a convening of the Legislature of its own accord I desire to call attention to the language in the Constitution of Alabama, the only Constitution of all the States of the Union which deals with the subject of the self-convening of the Legislature. That contains a great many protective provisions: "If at any time when the Legislature is not in session a majority of all the members elected to the House of Representatives shall certify in writing to the Secretary of State their desire to meet to consider the impeachment of the Governor, Lieutenant-Governor, or other officer administering the office of Governor, it shall be the duty of the Secretary of State immediately to notify the Speaker of the House, who shall, within ten days after receipt of such notice summon the members of the House by publication in some newspapers published at the capital, to assemble at the capitol at a day to be fixed by the Speaker, not later than fifteen days after the

receipt of the notice to him from the Secretary of State to consider the impeachment of the Governor, Lieutenant-Governor or other officer administering the office of Governor. If the House of Representatives prefer articles of impeachment, the Speaker of the House shall forthwith notify the Lieutenant-Governor, unless he be the officer impeached, in which event he shall notify the Secretary of State, who shall summon, in the manner herein above provided for, the members of the Senate to assemble at the capitol on a day to be named in said summons, not later than ten days after receipt of the notice from the Speaker of the House, for the purpose of organizing as a court of impeachment. The Senate when thus organized, shall hear and try such articles of impeachment," etc. There we have a carefully devised plan which is not to be found in this provision. I should have preferred very much to have a similar provision in the Constitution, but that is too late now to insert, but what I desire to call attention to is the difficulty which will be encountered in the formulation of a continuing joint rule. There certainly cannot be any difficulty in formulating a statute, and I therefore propose as an amendment, as follows: that there be stricken from line 2, page 1, the words " continuing joint rule," I mean from line 5, the words " continuing joint rule," and that the word " law " be substituted and from line 1, page 2, the words " continuing rule " and that the word " law " be there substituted, and that this matter be recommitted to the Committee of the Whole with instructions forthwith to report in favor of this amendment.

The President — It will be necessary for the gentleman to send his proposal to the desk.

Mr. Lincoln — If the gentleman will withhold that motion for a moment, I would like to call the attention of the Convention to the fact that a somewhat similar proceeding has just been adopted with reference to the budget bill in which we have provided for the procedure of the Legislature in examining the Governor and heads of departments and in that article we have used the word " procedure " for such purpose and inquiry as is provided by law. It seems to me that Mr. Marshall is quite right upon this subject, and that it is equally appropriate to use the word " law " in the procedure for the convening of the joint sessions of the Legislature in the article now under discussion.

Mr. R. B. Smith — Mr. President, the reason for using the term " continuing joint rule " is, first, the matter over which the Legislature exercises jurisdiction at its meeting is one which is peculiarly its own, and in which the Governor has no part, and should have no part either in the procedure or otherwise. There is no question about the joint rule. We have had joint rule covering the Senate and Assembly for many years so as to give the

Assembly jurisdiction over certain matters which would otherwise be within the exclusive jurisdiction of the Senate, and vice versa. The only question that arises or can possibly arise is as to the construction of the word "continuing." I admit that I do not know of its use elsewhere. On the other hand, I assert that it is entirely proper to use it here, I believe it should be used, and we will give it a meaning about which there can be no question. Each House is given the power to make its own rules and, under the practice which has prevailed in the Legislature for years, each House has exercised the power of adopting a joint rule, that is, rules adopted by both the Senate and the Assembly. Those rules continue only during the session; in other words, they are temporary rules during the life of the session only. A continuing joint rule is one that, when it is once adopted, continues until it is altered or amended. The meaning would seem to be very clear. It continues from Legislature to Legislature, subject only to the power of a succeeding Legislature to modify or amend it. I cannot conceive of where there can be any misconstruction. I believe the language is absolutely correct. I know that it will be interpreted rightly and I do not believe that any matters in which the Governor has no jurisdiction whatever, matters which may bring about his own impeachment, for instance — I do not believe that he should take any part in formulating the rule which is to govern the proceedings of the Legislature.

Mr. Marshall — Does the gentleman understand that a continuing joint rule can ever be amended by both Houses?

Mr. R. B. Smith — I certainly do so understand. There is no question about it.

Mr. Marshall — There is a serious question in my mind as to that.

Mr. R. B. Smith — Absolutely no question. Any rule can be amended at any time.

Mr. Sheehan — Mr. President, what section of the bill are we now considering?

The President — The bill is No. 4 on the order of third reading, print No. 798, introductory No. 291, to amend Article 3 and Section 4 of Article IV of the Constitution, in relation of voluntary sessions of the Legislature and the Assembly.

Mr. Sheehan — In order to discuss it, I desire to know whether we are considering Article III or Article IV.

The President — The whole bill is open for discussion.

Mr. Sheehan — Mr. President, when this measure came before the Committee on Legislative Powers I opposed the adoption of the amendment relating to Section 4 and I desire to state why I opposed it then and why I think it ought not to be adopted here.

The present Constitution provides that the Governor has the power to convene the Legislature or the Senate only on extraordinary occasions. This proposal in Section 4 gives him the authority to convene in extraordinary session either the Senate or the Assembly or both. Now, I can conceive of a situation, Mr. President, where there may be a Democratic Governor in this State with a hostile Senate or Assembly, I can see where the Senate might be in opposition to the Governor and where the Assembly might be of his political faith, and I can well understand how, under the excitement of an approaching election, we might have a governor convening not the Legislature, probably politically divided, but the Assembly, for the purpose of authorizing, as has often been done before, an inquiry on the eve of an election into the public affairs of the city of New York — not always, sir, for the purpose of getting the truth but for getting headlines in the newspapers in order that the voters might be influenced in the coming election. I heard no good reason advanced before the committee, nor have I heard any here, why the Governor should be permitted to convene an extraordinary session and make his own selection, either the Senate or the Assembly. The power to convene the Senate in extraordinary session by the Governor has always been exercised by him — why? Because the Senate has the power of confirmation or rejection of appointments. No such power is vested in the Assembly and I know of no reason why this particular rule should be extended to the Assembly. And unless, Mr. President, there is some good and unanswerable reason advanced here to justify this departure at this time, it seems to me the proposition should not prevail.

Mr. Steinbrink — May I direct attention to the fact that Section 4 of Mr. Smith's proposal, now under consideration has in it something that is in conflict with Proposal No. 755, General Order No. 26. The proposal now under consideration at the end provides for a salary to the Governor of $10,000. If we approve that, it is in conflict with No. 755 which is still to be considered, and which, as recommended by the committee, provides for a salary of $20,000.

Mr. Brackett — Speaking to the point made by the delegate from New York, Mr. Sheehan, I can see no harm that can possibly come in the supposed case he suggests that could not now come, if the Senate was of the political faith of the Governor and the Assembly the other way, by calling the Senate together. Of course the object of having the provision that the Senate may be called together separately from the Assembly is for the purpose of confirmation, and, so far as I know, it can be used in no other way. But this provision allowing the Assembly to be called

together alone, is, I suppose, for the purpose of meeting a case where there is talk that a Governor should be impeached and he is so confident of his position that he is willing to call the Assembly together for the purpose of letting them take action if they can.

Mr. Sheehan — The first provision, of course, gives the Senate and Assembly the continuing right to convene whenever either body wants to.

Mr. Brackett — I know, but still the Governor might have such a consciousness of rectitude — and I recollect that this was argued in the last impeachment trial — he might be, as I say, so conscious of his rectitude and so cocky about the situation as to say: "I will call you gentlemen together. Now if you think you can put one over and impeach me, go ahead and do it." This would allow that to be done. But if he did call the Assembly together they could not have an investigation separate and apart from the Senate. They could not compel the attendance of a single witness. They would not have a cent of funds to pay their expenses.

Mr. Sheehan — Is it not a fact that under the laws as they exist to-day either branch of the Legislature can conduct an inquiry but cannot make an appropriation of money except by joint resolution — but they can conduct an inquiry?

Mr. Brackett — A committee of either House can conduct a voluntary inquiry in the way of examination of books and things of that kind, but they cannot compel the attendance of a single witness, as I understand the law, without a joint resolution.

Mr. Wagner — I think the Legislative Law gives the power to a committee of either House of the Legislature to subpœna witnesses.

Mr. Brackett — If the committee is appointed by a joint resolution.

Mr. Wagner — No, a standing committee.

Mr. Brackett — I do not think so, I may be mistaken.

Mr. A. E. Smith — On the question of the right of the Governor to call the Assembly into extraordinary session, isn't that necessary if the provisions now incorporated in that iniquity known as the short-ballot bill were adopted?

Mr. Brackett — Brother, don't worry about that. It is never going to be incorporated. If you want to ask a supposititious question, of course, I can answer it.

Mr. Quigg — I am inclined to object to the policy of returning a bill to the Committee of the Whole. I think Mr. Marshall should make his motion and send it back to the committee from which it arose. A single objection will prevent it from going back to the Committee of the Whole, under Rule 25, and I am going to make it.

Mr. Marshall — I think you were not here when we resorted to this procedure. It is a legitimate procedure for amending. It is only a fiction, as I understand.

Mr. Quigg — I do not so understand it, and if bills are to be sent back to the Committee of the Whole I call the President's attention to Rule 25. I do not object to the amendment — I will vote for it — but it will be a very bad policy if it is once started.

Mr. Marshall — I ask the President whether I am correct in my procedure. My idea is that the motion I have made is purely fictitious so that we may here perfect the measure by making this amendment. That was the idea I had in mind and that is why I made my motion. We pursued that course this morning in respect to another measure.

The President — Has the proposed motion been sent to the desk?

Mr. Marshall — I will amend my motion, if that is proper practice, to recommit it to the Committee on Legislative Powers.

Mr. Brackett — Is his motion to recommit to the Committee of the Whole with instructions to amend as indicated and report forthwith?

Mr. Marshall — Certainly.

Mr. Brackett — That motion is the proper way to amend here, I will remind the delegate from Columbia.

Mr. Quigg — Mr. President, I do not see how you are going to do it. There are only two ways of committing to the Committee of the Whole, according to the rule; one is on the report of a standing or select committee, and the other is by unanimous consent.

The President — The Chair does not think that the Convention is limited in that way. Any committee may be discharged from further consideration of any matter referred to it, according to the rule, and such matter will then be referred to the Committee of the Whole by vote of the Convention. The Chair believes that the Convention has entire control over the bill and that the motion to recommit to the Committee of the Whole with instructions to report as directed forthwith is correct practice.

Mr. Marshall — Mr. President, that is the motion which I have made.

Mr. Parsons — In regard to Mr. Marshall's motion, which he is about to make, I wish to call the attention of the Convention to this fact, that if we leave in here the language "joint rule" it might be that either branch of the Legislature would abolish the joint rule by refusing to join in a concurrent resolution sought to be passed, and the precedent for that is the action taken on the joint rules which formerly existed between the Senate and House

of Representatives, the National Senate and House of Representatives, which for a great many years had joint rules, and when the question came up about the electoral count in 1876, the Senate took a position different from that of the House, and, as the House refused to concur in the resolution which the Senate sent over, the Senate thereafter treated as of no effect the joint rules which had existed for many years. So that if we keep in here the language "joint rules" we shall keep in language which has been interpreted by our Congress to mean that it can be abrogated at any time by one of the branches. Therefore, Mr. Marshall's amendment should be adopted so that it can be put into the legislative laws.

Mr. Hinman — I rather agree with Mr. Ray B. Smith that it is a function which is entirely the Legislature's and if any language can be used which will confine the jurisdiction of this matter entirely to the Legislature, and in the case of the Assembly, in the matter of impeachment, entirely to the Assembly, that we ought to use such language.

I think, in criticism of what has been said by Mr. Parsons, that there could not be any likelihood of the two Houses agreeing on joint rules, that the same could be said relating to the two Houses agreeing upon the passage of a law, and the whole purpose of using the words "continuing joint rule" was that before any amendment should arise in which prejudice might be injected, or some issue that had been joined on a matter, that both Houses would pass some joint rule which would continue in force unless amended by the Legislature.

Mr. Marshall — Could one House alone neutralize the regulation included in the statute? The answer to that is no. But might not one House, under the suggestion made by Mr. Parsons, neutralize a joint rule?

Mr. Hinman — If that is not our understanding of the word "continue," that the joint rule shall remain in force until abrogated by both Houses, then that might be possible; but my interpretation of the word "continue" is that when both Houses in one year have passed joint rules for that purpose, the word "continuing" means that they shall continue, that these rules shall continue over the following session and over the following administration, until repealed or modified by the consent of both Houses, and not by the consent of one or the other. Now, I would suggest, however, if there is any doubt as to the meaning of the word "continuing," in view of past parliamentary law upon the subject, that a Legislature be able to bind a succeeding Legislature with reference to joint rules, that we make ourselves clear upon that matter, and I have this to suggest to the Convention, that the

Legislature may of its own motion, in the manner to be provided by joint rules, convene to take action in the matter of the removal of a judge of the Court of Appeals, a justice of the Supreme Court, and then use this language: " and shall provide such joint rules which shall continue in force until amended by the Legislature." There is something to the criticism that there is nothing in here which is directory to the Legislature to create these joint rules, that it assumes that somewhere else in the Constitution, or in the law, there is a provision which requires the passage of such rules, and then, upon page 2, add at the end of the sentence in line 2, after the word " impeachment," the words " and shall provide rules which shall continue in force until amended by the Assembly." I think that covers the criticism of Mr. Marshall, and I think that it covers the idea of those here who feel it is a function which should be in the Legislature so far as the removal of judges is concerned, and that it should be in the Assembly, so far as impeachments are concerned.

Mr. Wickersham — I hope Mr. Marshall's suggestion will be adopted. I call the attention of the Convention to the fact that the beginning of this section is that the Legislature may convene to take initial action concerning the removal of judges of the Court of Appeals. We are not dealing simply with the case of an impeachment of a Governor, but there are many other officials, and I see no reason whatever why the Legislature should not by law prescribe the rules which are to govern future cases of the impeachment of judges, of governors or anybody else, and this extraordinary hypersensitiveness which exists now that because a Governor might sometimes be impeached he should take no part in making the rules which shall govern the proceedings hereafter to be taken, I confess I have no sympathy with whatever. The proper and orderly method of dealing with the subject is by law.

Mr. Wagner — I am in accord with the proposition as advanced by Mr. R. B. Smith, and I am, of course, therefore, opposed to the Proposed Amendment of Mr. Marshall. Now, Mr. Lincoln a moment ago suggested that we had provided in another proposal that to carry out a certain function given to the Legislature, that procedure should be provided by law. Well now, I take it that Mr. Lincoln had in mind the budget proposal. Well, in that the Governor has as much to do as the Legislature. In other words, he is exercising with reference to legislation a legislative function, and he is as much a part of the Legislature for that purpose as is a member of the Legislature, but there is a function which is given exclusively to the Legislature, not as a Legislature, but to the members of the Legislature. We might just as well pass a proposal that this power shall be given to the Court of Appeals

judges or to any other State official. It is as members of the Legislature that upon them is devolved this power of impeachment and the removal of judges, and the procedure, therefore, to carry out this duty imposed upon them should be exclusively within their power, and not have the approval or disapproval of some outside influence, especially, to require the approval of the very men who may be affected by the procedure. Now, I think it is desirable,—

Mr. Brackett — Does the gentlemen think it is likely,— in view of the history of impeachments in this State, does he think it likely that the Governor who will be called upon to approve the passage of the law, regulating the proceedings on impeachments, would be the same Governor who would come under those provisions?

Mr. Wagner — Well, that is not the point, so much. He has not any part of the powers, or the jurisdiction, or the functions, and why should he prescribe the procedure under which these powers and duties are to be exercised.

Mr. Lincoln — Do you not think it desirable to have this particular practice as permanent as possible?

Mr. Wagner — You cannot make it any more permanent by law than you can by rule.

Mr. Lincoln — Do you not think it will be more permanent if a "law" is required which must go to the Governor for his signature as against a rule which may be modified on the part of the two Houses of the Legislature.

Mr. Wagner — No, no more permanent so far as following a particular procedure is concerned, because as I understand it, there is no doubt among the members of this Convention that the Legislature will provide a rule. But the doubt is that at some other time, at some future time, it may not be within the political judgment of one of these Houses that they should meet for the purpose of either impeaching or removing the Governor. Well, now, if either House is out of sympathy with the meeting, whether there is a law or a rule, they simply won't attend, and there is not any power that you can exercise under the law to make them attend, that you could not equally exercise under a rule. So that so far as the efficacy of the thing is concerned, there is absolutely no difference between a law and a rule, except that a rule is more in conformity with the whole proposal here, which is supposed to be the exercise of these duties and functions independent of all other officers of the State.

Mr. Clinton — The object of this proposed amendment is to place it in the hands of the Assembly and Senate and of the Assembly acting alone, to take proceedings which may be deemed necessary by the Assembly for the impeachment of officials of the

State. One of those officials is the Governor, and it seems to me that to be consistent the power to convene should be confined to the Legislature itself. Therefore, I will say, although I have not put it in form on paper, but will do so, I would add that in view of the doubt as to the meaning and the effect of the word "continuing,"— I would therefore move to amend the motion by Mr. Marshall by substituting in place thereof that the proposed amendment be amended by striking out the words "may of its own motion," in line 4 and insert in place thereof the word "shall"; by striking from line 5, the word "continuing" and insert after the word "rule," which follows, the words "which shall continue until abrogated or amended by both the Senate and the Assembly." I move further to amend by striking out the words "may of its own motion" in line 7, and the word "continuing" in line 1, on page 2, and inserting after the word "rule" the words "which shall remain in force until abrogated or amended by the assembly." It seems to me that that puts the entire control in the hands of the Legislature which was intended to be placed in its hands by the amendment.

The President — The gentleman will have to reduce his amendment to writing, if possible, so that the Secretary can report it for action by the Convention.

Mr. Clinton — I will put it in form.

Mr. Westwood — The distinction between the position taken by Mr. Smith and that taken by Mr. Marshall in this matter is this: That Mr. Smith seeks to reach an actual situation of substance, while Mr. Marshall fears a situation of construction which possibly may arise. In other words, Mr. Smith feels that the time may come and we must admit that it may, that it is within the possibilities, when the Governor in the exercise of his duties would be called upon to pass upon a procedural enactment, having to do with his own removal, while Mr. Marshall's fear is that the courts may misunderstand what we mean by the adoption of the term "continuing rule." We must concede that Mr. Smith's fear is grounded; that there is possibility of the situation arising. I do not believe that there is any possibility of Mr. Marshall's fear ever materializing for this reason: When in the Committee of the Whole it was suggested that we use the word "rule"; that suggestion was at once met with the statement that one Legislature cannot make a rule for an ensuing Legislature. That same idea would, of course, instantly occur to any court convened for the trial of impeachments or to the Court of Appeals, or to any other court that might have to do with placing a construction upon the language which is by this proposed amendment intended to be written into the Constitution; and to meet that suggestion, the committee suggested that there be introduced into this proposal the

word " continuing," and it seems to me beyond all comprehension that the court would not put upon the word " continuing " the same construction that the members of the committee that had to do with that bill and that the members of the Committee of the Whole had in mind when they used the word " continuing." It certainly has a simple meaning. It is not complex. It was used for the purpose of meeting a single situation which will be understood by the courts as we understand it. For that reason all of the motions to amend are unnecessary and should be defeated.

Mr. Marshall — I would like to have you state whether or not if the words " continuing joint rule " were used, that would be a rule which could ever be abrogated, whether it would be continuing in the sense that it could not be changed.

Mr. Westwood — I can answer the question.

Mr. Marshall — I have my serious doubts about it.

Mr. Westwood — I do not think that your doubts will remain after you have received what you have just asked for. The courts, it seems to me, could not possibly attach that meaning to that word so long as the courts appreciate that we had a vocabulary to draw from at this time, now, which vocabulary includes the English word " perpetual."

Mr. Marshall — The gentleman said that I would be satisfied. I must repeat my ignorance, because he couples his statement with the idea that the courts could not possibly do a certain thing although I have known them to do a great many things which good lawyers consider to be impossible.

Mr. Quigg — What would happen in case the Legislature did not do it?

Mr. Westwood — You might also ask, what would happen in case the Legislature did not pass a law?

Mr. Quigg — You don't propose in this bill that they shall do it?

Mr. Westwood — Mr. Marshall's proposition, to which I was principally addressing my remarks, concerned the changing of the language from " joint rule " to " law." We must assume that the Legislature is going to do something, and we must assume that the courts are going to put the same fair interpretation upon language to cover a known, distinct, well-understood situation, just as we know it.

Mr. Coles — I understand that he says a continuing rule may be modified or amended, is that so?

Mr. Westwood — I would say, I cannot conceive of the court placing any other interpretation upon it than that it may be amended by the authority and by the means which created it.

Mr. Coles — Well, would the gentleman say that it ceases or that it still continues?

Mr. Westwood — By the only fair construction of the word "continue" it ceases only by the authority which has the authority to "cease" it — to change it.

Mr. Coles — Something which ceases surely does not continue.

Mr. Westwood — It continues until it is "ceased."

The President — The members will wait until they are recognized by the Chair before they address the Convention.

Mr. Marshall — If nobody else desires to discuss this question I will call for my motion.

Mr. Sheehan — Mr. President, I rise to a parliamentary inquiry. My hearing is not of the best and I am not quite certain that I comprehended the motion of the gentleman from New York, Mr. Marshall, and the President's decision, but it is apropos of the discussion we had this morning just as we adjourned and it raises a very important question that is going to be constantly before this Convention until we adjourn and I think this is the time to settle it definitely. I will be satisfied with the decision of the President, whatever it is. Mr. Marshall's proposition is that the amendment be recommitted with some amendments to the Committee of the Whole with instructions to report forthwith. That under the ruling of the President is a perfectly proper resolution and by necessary implication that is the only way we can dispose of a measure that is on third reading after the title has been read. Now the point I am getting at, Mr. President, is whether or not that construction of the rule is not going to limit us to sending bills to be reported back forthwith to the Committee of the Whole without right under the rule to recommit to a standing committee that had the proposition before it — except by Committee of the Whole, or something of that kind. Rule No. 41, Mr. President, which you referred to this morning, provides that a motion may be made during third reading of any Proposed Constitutional Amendment, to recommit and such motion shall not be debatable. Senator Wagner moved that the proposition amended be laid upon the table. Now I desire to call the President's attention to Rule 44, which follows Rule 41 and relates to motions and resolutions and their precedence, no matter in what order of business the Convention may be, whether in Committee of the Whole or on third reading. Mr. President, my parliamentary inquiry is whether or not a motion to recommit this measure to the Committee on Legislative Powers would not be in order, and it seems to me that that must be so when Rule 41 is read in conjunction with rule 44 and 46 which provides after the motion shall be stated by the President it shall be deemed to be in the possession of the Convention, but may be withdrawn at any time before it shall be decided or amended — merely stating that a

proposition that is before the Convention at any time may be amended, so that the only way that I can get a vote on a proposition that I might want to submit here on this measure, to strike out the word "assembly" in the fourth section in this Proposed Amendment would be in the nature of an amendment to Mr. Marshall's proposition, and that, it seems to me, is denied me, if the strict construction is given to the rule.

The President — The Chair has no doubt on the question put by Governor Sheehan. A motion to commit to the Committee on Legislative Powers would be in order. A different motion has been made and is now before the House which is a motion to recommit to the Committee of the Whole. The Chair is of the opinion that that also is in order. The Chair thinks that it would be a proper motion to amend the instructions proposed by Mr. Marshall, so if Mr. Sheehan wishes to include instructions with regard to the last clause of the bill he can move to add it to the instructions proposed by Mr. Marshall and that amendment if accepted and voted upon by the Convention, the Convention has had its way on the subject which Mr. Sheehan —

Mr. Sheehan — Acting on that suggestion, Mr. President, I move to amend Mr. Marshall's amendment to the effect that this measure be committed to the Committee of the Whole with instructions to strike out in line 9, Section 4, the words "or assembly."

The President — The question is on amending Mr. Marshall's motion by adding instructions to the Committee of the Whole to strike out the words "or assembly" in line 9, page 2. Is the Convention ready for the question?

Mr. Bernstein — Mr. President, is that debatable?

The President — It is, within the limits fixed.

Mr. Bernstein — Well, Mr. President, it seems to me that Governor Sheehan has overlooked the possible case of a contingency arising in the course of administration of our affairs where the Governor would have to call the Assembly in session in order to frame articles of impeachment against the Lieutenant-Governor. Section 13 of the Constitution provides that the Assembly shall have the power of impeachment by a vote of a majority of all the members elected and that provides further as to how the impeachment shall be had. Now, I think that the provision contained in this proposal which gives the Governor of his own motion the right to call the Assembly into existence, is a proper proposal to meet such a case, and I think possibly that Governor Sheehan overlooked that contingency when he raised the question before the Convention.

Mr. Wagner — What provision is there in the Constitution for the Governor referring a matter of impeachment to the Legislature?

Mr. Bernstein — The Governor is to call the Legislature into extraordinary session. Now it may be possible that it would be necessary to call the Assembly into session for the purposes of framing articles of impeachment against the Lieutenant-Governor, in spite of the fact that this new proposal gives the Assembly the right, of its own motion, to convene for that purpose; there may be an occasion when the Assembly will refuse to convene of its own motion, and then it might be the duty of the Governor to call the Assembly into extraordinary session for that purpose.

Mr. Wagner — Don't you understand impeachment to be purely a function for the Legislature and that the Governor has nothing to do with the question of impeachment?

Mr. Bernstein — He has the function of calling the Legislature into existence at an extraordinary session.

Mr. Wagner — Is not that only for the purpose of performing legislative functions that he has the power to call them together?

Mr. Bernstein — He has the power to call them together for the performance of legislative functions, it is true, but also to call them into extraordinary session for the purpose of impeachment, if necessary, of some other officer.

Mr. A. E. Smith — Mr. President, don't let the Convention get the idea that is so. The power of impeachment, according to the Constitution that we are now operating under, the power of impeachment rests in the Assembly, not in the Legislature but in the Assembly, without any action of any other person in this world. It is right in the Assembly.

Mr. Marshall — What you have said is entirely correct, but isn't it a fact it may be necessary to convene the Assembly in extraordinary session in order that it may deal with charges of impeachment, as, for instance, if one of the State officers who is impeachable is guilty of malfeasance in office. The Governor might find it necessary to convene an extraordinary session of the Assembly to deal with that subject, and that is the reason for the insertion of this amendment to which Mr. Sheehan has objected.

Mr. A. E. Smith — I would be against anything which would give the Governor or anybody any right to call the Assembly together for the purpose of impeachment.

Mr. Bernstein — But it has that right now.

Mr. A. E. Smith — Now, let us understand what the Constitution says: The Constitution gives the Governor no right to-day to call the Assembly together for any purpose, does it?

Mr. Bernstein — No.

Mr. A. E. Smith — All right; don't let him have it.

Mr. Wagner — Mr. President, just for a moment: If I under-

stand Governor Sheehan's objection, he is afraid, if the Governor has the right to call the Senate or Assembly together that they might perform business other than that which he recommends. Is that the point?

Mr. Sheehan — No; if the President please; the point I make is, the Senate may be in difference politically with the Governor; therefore he would not convene the Senate, but if this amendment were adopted he would have the right to convene the Assembly alone and submit to the Assembly in its extraordinary session the proposition that an inquiry should be made into the affairs of a given city, let us say, thirty days before election. We discussed it fully before our Committee. I thought the question had been settled in the negative. I mean, Mr. President, that I thought there was no question that that was a contingency which may arise under the amendment as it has been reported.

Mr. A. E. Smith — Mr. President, I would like to ask the Chairman of the Committee if we reported this bill with those words " or Assembly " only in it?

Mr. Barnes — I have not the record here but I know that we did not intend to have it there. The purpose of the Committee on Legislative Powers and Limitations in regard to this bill was to leave no power with the executive whatsoever in relation to these matters either by passage of law or by calling off the Assembly. Our intent was to make the function absolutely distinct and separate as we thought it should be, therefore, I heartily concur with Mr. Sheehan in striking out the words " or Assembly " and do not believe our Committee concurs with the proposal of Mr. Marshall that the matter should be provided by law and not by continuing the joint rule, which of course means continued until it is repealed by both Houses.

The President — The question is on the amendment proposed by Mr. Sheehan to Mr. Marshall's motion. Those in favor will say Aye —

Mr. Sheehan — Mr. President, I ask for a division on the question. I ask that my motion made last be put to the Convention separately.

The President — The Chair is of the opinion that that cannot be done. The question before the Convention is upon Mr. Marshall's motion to commit with instructions. If Mr. Sheehan's motion to amend Mr. Marshall's instructions be adopted and Mr. Marshall's motion to recommit be lost, Mr. Sheehan's proposition can be put in an independent motion.

Mr. Sheehan — Mr. President, for the present I withdraw my motion.

The President — The question is upon the amendment.

Mr. Sheehan — Mr. President, Mr. Austin suggests that I am probably making a tactical blunder, and I guess he is right, and I again restate my motion.

The President — The question is upon Mr. Sheehan's proposed amendment to Mr. Marshall's instructions. All in favor will say Aye, opposed No.

The Chair is in doubt. All in favor of Mr. Sheehan's proposed amendment to the instructions by Mr. Marshall will rise and stand until counted.

Mr. Wickersham — Mr. President, you said instructions proposed by Mr. Marshall?

The President — The question is upon Mr. Sheehan's motion to amend the instructions proposed by Mr. Marshall's motion.

Mr. Wagner — Mr. President, under the motion as it is now those of us who favor Governor Sheehan's proposal must also vote in favor of Mr. Marshall's proposal?

Mr. Barnes — No, not at all.

Mr. Wagner — Then I misunderstood.

The President — The gentlemen may be seated. All opposed to Mr. Sheehan's proposal to amend Mr. Marshall's proposed instructions will rise. The motion is lost. The question now is on the instructions proposed in Mr. Marshall's motion to amend. The Secretary will report the amendment.

The Secretary — Page 1, line 5, strike out the word "continuing" and insert after the word "rule" the following: "which shall continue in force until abrogated or amended by both Senate and Assembly". Page 2, line 1, strike out the word "continuing" and insert after the word "rule" the following: "which shall continue in force until abrogated by the Assembly".

Mr. Wickersham — Mr. President, a point of inquiry. I understand this is a separate motion from Mr. Marshall's?

The President — The same bill cannot be committed or recommitted more than once at a time. The bill is committed, it goes out of the hands of the Convention and there can be no further instructions until it comes back again. No further amendments. The question is now upon Mr. Clinton's motion to amend the instructions proposed by Mr. Marshall.

Mr. R. B. Smith — Mr. President, the amendment is entirely satisfactory to me.

Mr. Barnes — Mr. President, it is satisfactory to the Committee also.

The President — All in favor of the amendment moved by Mr. Clinton to the instructions proposed by Mr. Marshall say Aye, those opposed No. The Ayes appear to have it; the Ayes have it and the instructions proposed by Mr. Marshall are before the Convention as amended by the motion of Mr. Clinton.

Mr. Sheehan — Mr. President, I move that this proposed amendment be recommitted to the Committee on Legislative Powers with instructions to strike out the whole of section 4.

The President — That motion cannot supersede but may be made as an amendment, a further amendment to Mr. Marshall's motion.

Mr. Sheehan — Mr. President, my first proposition was to strike out two words in section 4. My proposition now is to recommit to the Committee with the instructions to strike out the whole of section 4.

Mr. Westwood — May I ask a question: Would Governor Sheehan desire to bring about a situation where the Governor ceased to have to do with the military and naval forces?

Mr. Sheehan — There would be no amendment under my proposition; there would be no amendment whatever made to that, and section 4 would stand.

Mr. Westwood — You mean to strike out just the words in italics?

Mr. Sheehan — Yes.

Mr. Westwood — The members around here did not so understand.

The President — If the motion of Mr. Marshall prevails it includes direction to report forthwith and the bill would come immediately back into the Convention and it would then be subject to another motion to commit with instructions.

Mr. Sheehan — Mr. President, I assumed, of course, that it had not left the desk and was still there.

The President — The question is upon the motion of Mr. Marshall to recommit to the Committee of the Whole with instructions as stated by him and as amended upon motion of Mr. Clinton.

Mr. Wickersham — Mr. President, may that be read, for I, for one, do not understand what it is?

The President — The Secretary will read the instructions as amended.

The Secretary — Mr. Marshall moves to strike out in line 5, page 1, the words "continuing joint rule" and substitute the word "law." Strike out from line 1, page 2, the words "continuing rule," and insert in place thereof the word "law."

The President — The Secretary will read the amendment adopted by the Convention.

The Secretary — Page 1, line 5, strike out the word "continue" and insert after the word the following, "which shall continue in force until abrogated and amended by both the Senate and Assembly." Page 2, line 1, strike out the word "continue"

and insert after the word "rule" the following, "which shall continue in force until abrogated or amended by the Assembly."

Mr. Wagner — Mr. President, I rise to a question of information. The proposal made by Mr. Marshall is absolutely contradictory to the proposal made by Mr. Clinton, which we have just adopted, so that by adopting Mr. Clinton's amendment we have in effect disposed of the Marshall proposal.

The President — By adopting Mr. Clinton's amendment we have amended the original proposition made by Mr. Marshall, and that proposition as amended is now before the House. The question is on recommitting this bill to the Committee of the Whole with instructions to amend and report forthwith in the terms stated in Mr. Clinton's amendment which has been adopted by the Convention.

The President — All in favor of the motion will say Aye, those opposed No. The Ayes have it, and the motion is agreed to. The bill is now before the House in its amended form.

Mr. Sheehan — Mr. President, I move to recommit the bill to the Committee of the Whole, with instructions to strike out the following: In section 4, line 9, the words "or Assembly"; on line 10, the word "and", and the words "so convene", and the bracket, so that section 4 will then be as section 4 is now written in the present Constitution, and, Mr. President, that was the way the Committee intended to report it.

Mr. Barnes — That is correct, Mr. Sheehan.

Mr. Wickersham — Mr. President, I move to amend that motion by moving to recommit without instructions. This is now getting so confused that nobody knows what it means, and in order that it may be given that consideration which it cannot receive here under these circumstances, I move it be sent back to the Committee of the Whole without instructions.

Mr. A. E. Smith — A point of order, Mr. President.

The President — The gentleman will state his point of order.

Mr. A. E. Smith — I rise to the point of order that the Convention recommitted the amendment to the Committee of the Whole, and until such time as the committee has met, the bill cannot come back to the Convention.

The President — The Chair is of the opinion that inasmuch as the direction was to amend and to report forthwith, that will not be necessary. The bill is now back in the Convention.

Mr. Barnes — Mr. President, I trust Mr. Wickersham's motion will not prevail. I cannot see how there is any confusion in this matter at the present time. This bill simply provides that for purposes of impeachment and trial of judges the Assembly or the Legislature may convene of their own motion under rules estab-

lished by them, to be continued in force until those rules are changed. Now there is nothing more in the bill.

Mr. Wickersham — What words do you understand are now in the measure before us, Mr. Barnes?

Mr. Barnes — In what particular point?

Mr. Wickersham — The point upon which we have just been voting.

Mr. Barnes — The present language is on the first page, that the Legislature may of its own motion, in the manner to be provided by joint rule, and Mr. Clinton's language, meaning that it continue until changed, giving a definition of the word "continue", and a definition on page 2 also of the word "continuing" over which we had quite a debate as to what it meant, and Mr. Clinton simply clarified it. We thought in the Committee it was very clear what it meant. Maybe we need better language. The motion of Mr. Sheehan to strike out Section 4 was entirely in order, for the reason that I had no idea of the words "or Assembly" getting into this bill — did not wish it to be in the bill when reported. I trust Mr. Wickersham's motion will not be adopted, and that Mr. Sheehan's will be adopted, and that we will pass on to the passage of this bill, which will not take ten minutes.

Mr. Leggett — Just a question to the Chairman. Does the Convention understand that the effect of Mr. Sheehan's amendment is to restore section 4 to its original form?

Mr. Barnes — Original form in the present Constitution.

The President — The question will be upon Mr. Wickersham's Proposed Amendment to Mr. Sheehan's motion. All in favor will say Aye, contrary No. The Noes have it and Mr. Wickersham's amendment is lost. The question is on Mr. Sheehan's motion, which is to recommit to the Committee of the Whole, with instructions to amend by striking out the words in italics and restoring the words in brackets and report forthwith. All in favor of the motion will say Aye, contrary No. The Ayes have it and the motion is agreed to. The bill having been amended will lie over for reprint and for action later.

Mr. Rodenbeck — I submit a report of the Committee on Revision and Engrossment.

The Secretary — Mr. Rodenbeck, from the Committee on Revision and Engrossment, to which was referred Proposed Constitutional Amendment introduced by the Committee on Taxation, No. 812, Introductory No. 679, entitled "Proposed Constitutional Amendment. To amend the Constitution by inserting a new article in relation to taxation," reports the same as examined and found correctly engrossed.

The President — Without objection the report is accepted.

Mr. Unger — Will General Wickersham defer that motion just one moment, while I ask unanimous consent that I be recorded in the affirmative on Printed No. 746, which was the first roll call this morning? I was within the bar of the House, but was engaged in some other business of the House and did not hear my name called.

The President — The Chair regrets to say that this is impossible, but informs Mr. Unger that his statement will go upon the record as an explanation.

Mr. Brackett — The gentleman can have it entered on the record that had he been present and voted he would have voted Aye. That is strictly legitimate parliamentary language.

The President — If Mr. Unger wishes to state upon the record how he would have voted he can do so.

Mr. Unger — I desire to state that had I heard my name called I would have voted in the affirmative.

The President — That will be recorded. The third reading calendar having been completed, the next is unfinished business of general orders. Special orders. The Convention will go into Committee of the Whole for the consideration of the special order of the day, the report by the Committee on Public Utilities. Mr. Steinbrink will resume the Chair.

The Chairman — The Convention is in Committee of the Whole and will continue the consideration of General Order 38 and the amendments offered yesterday.

Mr. Hale — Mr. Chairman, I send up the following resolution.

The Secretary — By Mr. Hale: Resolved, That when the Committee rise, it report progress and recommend that Proposed Amendment, General Order No. 38, be recommitted to the Committee on Public Utilities, together with all proposed amendments and substitutes, with instructions to report back on Friday morning August 20th, at ten o'clock, and that the amendment retain its place in general orders.

Mr. Hale — Mr. Chairman, the reason for this motion is simply this: As every gentleman here knows, there were many amendments offered. We had a committee meeting started this morning, and we had hoped to bring back a draft which would meet the reasonable suggestions of many delegates. We were interrupted in that meeting by the necessity of attending in order to vote upon the final passage of the bills which have now been passed, and had no opportunity to consider these matters which I refer to in the resolution.

Mr. Westwood — May I call Judge Hale's attention to the fact that his resolution suggests that we report to the Convention the recommendation that the Proposed Constitutional Amendment

hold its place in general orders, whereas, as a matter of fact, it occupies no place in general orders. It is in special orders, and I would therefore suggest that he consider amending the resolution so as to permit it to retain its place in special orders.

Mr. Hale — Its place in special orders, by the rule, is ahead of the judiciary article. I do not want to impede that. I think it will have to be removed by special rule later on, according to how the judiciary article proceeds.

The Chairman — The Chair understands that when this goes back it loses its place and will have to be dealt with in the Convention.

Mr. Westwood — That is the reason why the resolution requested that it retain its place, and I suggest that that place be special orders in general orders.

Mr. Hale — Mr. Chairman, I simply followed the precedent that was created by the Cities Committee report; after discussion of numerous amendments, that was sent back to the Committee but retained its place on general orders, losing its place as a special order.

Mr. Brackett — I think the delegate from St. Lawrence is incorrect and too modest. The present position of the bill is a special order in general orders, and if it retains its place, as his motion requests and specifies, it retains its place as a special order in general orders.

Mr. Wickersham — We adopted yesterday, I think it was, a report which was requested, and the resolution was that it should retain its number on the general orders calendar. That was the form in which the resolution was adopted.

The Chairman — The Chair understands that the proposal may retain its number, but that does not necessarily carry with it that it retains its place. Are you ready for the question? All those in favor will please signify by saying Aye, contrary No. The resolution is adopted.

Mr. Wickersham — I now move, Mr. Chairman, that we rise and report progress and submit the resolution adopted to the Convention, and ask its approval.

The Chairman — All those in favor of the motion will please signify by saying Aye, contrary No. The motion is carried. (The President resumes the Chair.)

The President — The Convention will come to order.

Mr. Steinbrink — The Committee of the Whole directs me to report that they have had under consideration General Order No. 38, that they report progress and ask leave to sit again, and ask that the order be recommitted to the Committee on Public Utilities, together with all Proposed Amendments and substitutes,

with instructions to report back on Friday morning, August 20th, at ten o'clock, and the request is that it retain its number on the General Orders calendar.

The President — All in favor of agreeing to the report of the Committee of the Whole will say Aye, contrary No. The report is agreed to and the leave is granted. The Convention will go into Committee of the Whole upon the next Special Order, which is the judiciary article.

Mr. Wickersham — Mr. President, in view of the hour, I move that we recess until half-past eight. It is a little late to begin the consideration of the judiciary article now and break off in fifteen or twenty minutes.

The President — Is there objections? The Chair hears none and the Convention will stand in recess until half-past eight, when the Convention will immediately go into Committee of the Whole.

Whereupon, at 5:10 p. m., the Convention took a recess until 8:30 p. m., of the same day.

AFTER RECESS—8:30 P. M.

The President — The Convention will come to order.

The Convention will go into Committee of the Whole for the consideration of General Order No. 61, the report of the Committee on Judiciary. Mr. Wagner will take the Chair.

The Chairman — The Committee will resolve itself into the Committee of the Whole for the consideration of Special Order 61. The Secretary will read.

The Secretary — No. 807, General Order 61, by the Committee on Judiciary, to amend Article 6 of the Constitution generally.

Mr. Wickersham — Mr. Chairman, before taking up consideration of the Proposed Amendment reported by the Committee on Judiciary I should like to state briefly some of the considerations which have controlled the Committee in preparing and reporting the measure now before the Committee. The views of the Committee were embodied in its report which has been printed as a document and distributed among the members, and I assume has been before all the members of this body, and that will make it unnecessary for me to do more than state generally the problem which confronted the Committee and some of the salient points or what seems to the Committee of the greatest importance embodied in this report.

Mr. Chairman, in approaching this subject, the Committee addressed itself primarily to a consideration of the evils which it

was claimed exist at the present time in the administration of justice. Perhaps one of the most constant terms upon the lips of men and in public prints to-day has been the words "the law's delays", and there have been many criticisms — many of them harsh, some of them extreme,— as to the delay and the unnecessary complexity in the administration of justice in this State. Your committee invited to appear before it representatives of all the associations of lawyers in the State, the judges of all the courts and persons generally interested in the administration of justice. There is, unfortunately, no comprehensive official publication of statistics of the administration of justice in the State of New York and it is difficult to get an authoritative, comprehensive statement of facts showing the business of the courts in different parts of the State from which one may determine with any accuracy what work is being done by courts and judges and how far in arrears different courts are in the discharge of the various kinds of work which they are called upon to perform. One of the incidental reforms which we have sought to introduce has been a provision requiring the Legislature to provide for the collection and publication annually of the statistics of the judicial business of the State. One thing every lawyer who practices in this State does know is that the civil procedure of this State, regulated by the Code of Civil Procedure, is a mass of conflicting statutory rules, many of them without any apparent reason, conflicting, shifting, changing from session to session of the Legislature and finally built up into a great mass of inelastic regulations of procedure under which legal rights arise with respect to things that should be merely rules of practice.

Students of our system and of the similar systems in other states have for some time past pointed out the absurdity of this system and the need of a radical change in it and the suggestions of the most careful and most eminent students of this subject have been directed toward the separation of the ordinary rules of procedure in courts from the Legislature and placing them under the control of the courts so that they might be more flexible than statutory requirements can be and so that the Legislature should not be called upon constantly to change the statutes of the State in order to meet some details of mere precedure in court. But the difficulty has been, and the difficulty that confronted your committee at the outset of this problem was, to draw the line between those things which should be regulated by statute and those things which should be left to rule of court. Three or four years ago the Legislature, in response to the demand of the entire profession, appointed a commission which, after a large amount of very thorough, careful, painstaking, intelligent work, presented at

the last session of the Legislature a report which embodied a short and simple practice act, in 61 sections, which was to be the legislative control of procedure and provided that the courts should make rules of practice not inconsistent with this act, and in the meantime submitted a model code of rules. That report was transmitted to the Legislature of the State by the Governor at the last session and in pursuance of his recommendations the Legislature appointed a joint committee to examine this report and itself report at the next session of the Legislature with respect to its adoption. The report came into the hands of the committee and the members of this Convention after the beginning of our session and when we had been here some time. It was impossible in the time at our disposal to give it that critical analysis that would have justified our recommending its adoption by the Legislature, but enough was apparent on the face of the report to illustrate the feasibility of carrying out what had been recommended by students of this subject, and, therefore, we have seized upon that and as the fundamental reform in our procedure we have recommended a provision here to the effect that the Legislature at its next session shall act upon that report. We don't say "Shall adopt it" or "Shall approve it," but shall *act* upon it and shall enact a short and simple practice act and shall adopt a body of rules of civil practice, and that thereafter the rules of practice shall be made or amended or altered from time to time by the judges of the Court of Appeals and the Supreme Court, acting through such number, or body of them, as the Legislature may prescribe, and if it fails so to prescribe, then by the justices of the Supreme Court and the judges of the Court of Appeals; that every five years the Legislature shall appoint a commission to determine whether or not any change is needed in the practice act or in the law affecting procedure, civil procedure, and that the Legislature shall act upon that report by a single bill, but save and only by such bill shall the Legislature pass any law affecting the civil procedure, unless at the suggestion or recommendation of the judges named and who are concerned in the making of civil rules.

It is our judgment that thereby the civil procedure of this State will be relieved from the iron bands of statutory control in minute matters which ought to be regulated by rule of the court, and the vast mass of technical motions and orders and proceedings intermediate the bringing of a suit and the trying of the issue upon the trial calendar of the court will be greatly reduced and largely abolished. In that connection, we have also recommended the authorization of an appointment by the Supreme Court of Supreme Court Commissioners in the First and Second Departments, and with authority in the Legislature to extend it to other

departments as it may see fit, who shall act, who shall be salaried officials, prohibited from practicing law, who shall be available to act as commissioners in condemnation proceedings, to whom may be referred, either by standing rule or by order, any matters which the court may from time to time determine to refer to them, and to whom may also be referred for hearing and determination referable issues. And, in that connection, we recommend the continuance with certain limitations, of the official referees, restricting the present general and rather expanding provisions of the statute for official referees, and authorizing their employment in matters of this same kind. Bearing in mind that perhaps the most important adjunct to the court is the attorney, we have included a provision vesting under the Constitution that control which the Legislature has sought to give to the Court of Appeals to prescribe the standards and the regulations concerning the admission to practice of attorneys and counselors at law. Now, so much for the matters affecting procedure.

In the organization and the conduct of courts we found several points of congestion. Through most of the counties of the State there seems to be comparatively little delay after the case is at issue in reaching it for trial. In the city of New York, in the First Department it requires a period of from nine to ten months for the ordinary case on the trial calendar to be reached for trial after it is at issue. There is a much greater congestion in the 9th district. There is almost the same in the Second Department — second district. At special Terms, the delay is not so great. In fact, in New York, there is not now more than a period of three or four months intervening between putting a special term case on the calendar and reaching it for trial. In the Appellate Divisions in the First and Second Departments, we found a condition which requireed some careful consideration. The Appellate Division of the First Department is to-day disposing of a larger number of cases, I think it is safe to say, than any court in Christendom, in a given time, with a given number of judges. In the year 1914, that court heard and determined more than fifteen hundred appeals, besides eight hundred and forty motions, original motions in the court.

The court is composed, as you know, of seven justices appointed to it. In addition, there is in that department an appellate term composed of three justices assigned from month to month, changing from month to month, who now hear and determine appeals from the city court and appeals from the municipal court; and last year they disposed of upwards of 2,100 appeals from the municipal courts — of course they are generally comparatively simple matters, heard upon the typewritten records — besides

three or four hundred appeals from the city court. No court of seven judges can properly continue to dispose of that amount of business which the Appellate Division has to dispose of. In Brooklyn, in the Second Department, the number is not quite so large, but large enough. Last year the court in the Second Department disposed of 1,102 appeals and 643 motions in that court; whereas in the Third Department, there were but 388 appeals and 120 motions disposed of, and in the Fourth Department but 600 appeals, and I have been unable to get the number of motions. So that the point of congestion lies in the Supreme Court, Appellate Division of the First Department and the next point, the Supreme Court, Appellate Division of the Second Department. In the Court of Appeals we found an accumulation of upwards of 600 cases on the calendar to-day. The Court of Appeals has made no new calendar since May, 1914, and there are to-day on the calendar of the court, or there were, rather, on the 28th of May, 622 cases pending. It takes about two years for a case to be reached in the Court of Appeals after the return has been filed, and that court decides about a hundred cases every year less than come to it so there is a constantly growing accumulation of cases there.

Now, there are two ways, of course, to deal with this question. One is by limiting the jurisdiction and the other by increasing the number of judges or the organization of the court. So far as the Appellate Division in the First Department is concerned, it is to be said that that court has no arrearage of business. It has disposed of all the cases argued before it. It carried over last year only two undecided cases after the 31st day of December. It was a subject of some complaint at the bar that, to do this, the court is not able to afford counsel that full opportunity for argument and discussion which counsel are accustomed to think is their due. But, whether that be so or not, it is quite obvious that the institutions of the State cannot be framed upon the assumption that an Appellate Division with the jurisdiction that our Appellate Divisions have can properly consider and determine fifteen hundred appeals a year. That is more than twice the number that any other court except the Appellate Division in the Second Department disposes of and it is thirty per cent. more than that court disposes of.

Now, in the amendments which we have suggested, we have endeavored to make provision for using the entire judicial force of the court and in such manner as the exigencies of the business from time to time should require; in the first place, that they increase the permanent, assigned justices of the Appellate Division in the First and Second Departments by adding three to the First

Department and two to the Second Department. Then, we have provided what the judges, one and all, urged as a means of always enabling the court to be kept up to one hundred per cent. efficiency, a provision empowering the presiding judge to call in a judge from the body of the court to take the place of any regularly assigned judge absent temporarily, or temporarily incapacitated by illness or what not, to sit in the court for a period of not exceeding four months without any formal designation through the Governor but merely on the assignment of the presiding judge. Then we have provided for the first department that the court might, if it should determine to be proper, if it should find it required by the exigencies of business, sit in two parts, each part consisting of five justices under the direction of the same presiding judge, no part to be of less than five judges, and requiring a quorum of at least three to concur in a decision. We have provided, moreover — we have kept in the provision which authorizes the presiding justices of all the departments in the event that it is found that one department cannot dispose of the cases before it, to assign to some other department some of the cases pending in that court; and we have also empowered them to call upon the Governor if they find it proper for additional permanent assignments to the Appellate Division. So that under this machinery, the Appellate Division in the first department and in the second department may always be kept sufficiently organized to dispose of all of the Appellate work which goes to it, as one body, or as two bodies, as may be found necessary in carrying out the work. Then we have made the Appellate term a somewhat more permanent court than it has been, by providing that the justices shall be assigned to it in the first and second departments for a period of one year at a time. We do not continue — we do not impose upon them the same limitations which are imposed upon the justices of the Appellate Division who are prohibited from performing any other work in their department than that of the Appellate Division, but we leave them available for *ex parte* business or any general business they have time to perform, but provide that they be assigned through the Appellate Division, and we make the Appellate Term a court of appeals for the City Court as it is now, for the Municipal Court of the City of New York as it is now, for the county courts in counties outside of the first department and for the Court of Special Sessions in the city of New York and in the second department. So that thereby the Appellate Division will be relieved of a certain kind of business that now goes to it which will be disposed of by the Appellate Term. Since this report was formulated it has been suggested that in view of the increase which we have recommended in the

jurisdiction of the city court — in common law cases to $5,000 — there ought to be included a provision that if the judgment of the city court is reversed by a mere majority of the Appellate Term, there should be the same right of appeal to the Appellate Division that we recommend there shall be from the Appellate Division to the Court of Appeals in the matter of reversal by divided court of the judgment of the Supreme Court. Coming now to the Court of Appeals, the immediate circumstance that confronted us was this accumulation of upwards of six hundred appeals, with the inevitably increasing accumulation and with the delay to suitors which resulted from it. There seemed to be but two ways to meet that. One was to appoint a second division or commission of appeals, which I think all lawyers have found objectionable in the past, and the other was to do nothing, just to let this accumulation go on, and we have thought we would have been recreant to our duty had we failed to submit some solution, and had merely turned our back upon the difficulty. The other alternative is the one we have recommended, namely that within three months after the new Constitution shall take effect, in the first place, that the permanent force of the Court of Appeals be increased from seven to ten. Under the present Constitution as you are aware the Court has the right to call upon the Governor to designate not more than four justices of the Supreme Court to sit temporarily in the Court of Appeals until the arrearages are cleared up and the arrearages have never been cleared up and they are constantly growing. The court has never availed to the full of the power conferred upon it by the existing Constitution. We have been unable to ascertain why, except that the judges have thought that they could do more business and could better dispose of their cases with ten judges than with eleven. As a matter of fact they have had three justices of the Supreme Court sitting by assignment in the Court of Appeals for several years. We have recommended that those three judges be made permanent judges of the court, their successors to be elected by the people and the permanent composition of the Court of Appeals in the future be ten judges, one of whom shall be chief judge. We then recommend that three months after the adoption of the Constitution, the Court of Appeals shall call in from the Supreme Court not less than four nor more than six judges of that court and shall resolve itself into two parts, distributing the temporarily assigned justices equally between the parts, so that in each part there shall be four of the permanent judges of the Court of Appeals and two or three of the assigned judges; that the chief judge shall distribute pending cases as nearly equally as may be between those two parts and that each of those parts of the court shall then proceed to hear

and determine the accumulation of cases and that when the number of cases so accumulated is reduced to two hundred, and not later than December 31, 1917, the judges of the Supreme Court shall return to their permanent places, the Court of Appeals shall resume its normal proportions as a single court, and proceed with its business. That time was fixed as the estimated outside limit that should be required to enable the court to dispose of the accumulations of business and keep abreast of its current work. In view of the experience under the present provisions of the Constitution, we fixed a time limit when the Supreme Court judges should return to their court, to the end that this arrangement should be what it is intended to be, temporary, and that it should not be a part of the permanent organization of the court. We did not do the same thing with respect to the Appellate Division in the First Department because there is no such arrearage of cases there.

We then provided that the Court of Appeals shall annually make up a calendar of cases pending in it. It is now, as I said a moment ago, nearly a year and a half since the last calendar was made up in that court. We provide that they shall annually make up the calendar, and if on the first of January in any year there shall be 500 cases on the calendar of that court, the court shall call in Supreme Court judges, divide itself into two parts clear up the arrears, and when they get to 200 cases, not later than one year from the time of this expansion, the Supreme Court judges shall again return to their courts and the Court of Appeals resume its normal functions. By these methods we have sought to provide for the present exigency and to create machinery which would prevent any undue accumulation of cases in the future. One of the prime requirements in the administration of justice is that it shall be reasonably speedy, and that undue delays shall be avoided. In connection with the organization of courts our attention was directed to the Court of Claims, which, as this body knows, has been the football of politics. Boards of Claims, Courts of Claims,— each succeeding party as it has come into power has legislated out the Board of Claims or the Court of Claims, as the case might be, and created a new tribunal of the same kind under a different name. It was very obvious to your committee that one of two things should be done; either the Court of Claims should be made a permanent part of the judicial organization of the State, embodied in the Constitution, given appropriate powers and removed from this sphere of political activity, or its jurisdiction should be devolved upon the Supreme Court, to be exercised like other jurisprudence. We have adopted a plan recommending that the Court of Claims be continued as a separate,

distinct tribunal, for the reason that the Court of Claims is *sui generis*; it is really the successor of the legislative committee or the board of audit. Its function is solely to consider claims made against the State and to ascertain and determine what amounts the State should properly pay to claimants of that character which the Legislature is authorized to present through claims in that tribunal. The jurisdiction is exercised somewhat informally. The testimony is taken by a single judge who goes to the place where it is most convenient to get the facts; the cases are heard in an informal way and an award is made by a majority of the court. On the whole, we concluded that it were best to preserve that character of tribunal and to continue the court as at present constituted, authorizing the Legislature to make such changes or modifications in its jurisdiction as it should from time to time see fit, and to fix the salaries of the judges.

Before I pass to tribunals of less importance, let me say, in passing, that one of the matters we were called upon to consider was the conduct of courts of impeachment. The strongest argument employed by advocates of judicial recall has lain in the cumbersome nature of trials by impeachment and it has seemed to us that one of the most important things we could do was to simplify, so far as was possible, the procedure in courts of impeachment so that that remedy, when invoked, should present no such obstacles as to justify the reproach that it was an inadequate, cumbersome, useless instrument for the attainment of justice in the removal of an unjust public official. We have recommended the provision that evidence in impeachment trials may be taken by a committee to be appointed by the Court of Impeachment but that the impeached official should have the right, if he desired, to be heard before the court. That would very greatly simplify the taking of evidence in the ordinary impeachment case. It would relieve the court of impeachment from a complete suspension of the ordinary functions of its members in legislative or judicial work while the mass of testimony is being taken that might just as well be taken by a committee as by the whole body, which should be reported to the whole body.

We have recommended a number of provisions relating to county courts. The county court, as such, serves a most useful purpose in the ordinary administration of law. I confess that, as a practitioner in cities, I had not appreciated, until I sat upon this Committee and heard the testimony of practitioners through the State, the value of the county court as one of the vehicles for the administration of justice in the ordinary cases, especially in the administration of the criminal law, and, to a large extent, in the administration of the civil law. We were urged by a number of

persons appearing before us to recommend an increase in the jurisdiction of the county courts and we have yielded to that to the extent of recommending an increase from $2,000 to $3,000.

One of the subjects of complaint was that the exemption in counties having a population of less than 120,000 of the prohibition against the county judge practicing law — one of the results of that exemption had been a great deal of complaint that county judges were paid a very much smaller salary than they could afford to abandon their practice for and live upon, and that, in a great many instances, they were retained in lawsuits because of their official position. Whether they were influenced by that fact or not, it gave rise to a great deal of criticism. On the other hand, representatives of the different counties have stated to us that, as a rule, the counties would be unwilling to pay, perhaps would be unable to pay, large enough salaries to enable them to secure competent men, such as most county judges are, if they were forbidden to practice law. After a great deal of consideration we finally have recommended dropping the limit of population from 120,000 to 75,000 and prohibiting the county judges in counties having a population of 75,000 or upwards from practicing law. In order that this might not lead to the results which it was predicted in some quarters would follow, we have also provided that, in the counties affected by that change, the offices of county judge and surrogate might be combined, and we have exempted county judges under those conditions from the prohibition which we have put in another place in the article forbidding the Legislature to increase or decrease the salary of any judicial officer during the term for which he was elected. Now we have also recommended a modification in the jurisdiction of the county court by giving — extending its jurisdiction over non-residents having an office for the transaction of business in the county where the cause of action arose within the county. In that same connection I spoke of surrogates. One of the questions that confronted us was how to deal with the jurisdiction of the surrogates' courts. Two years ago, as you are aware, there was a revision of the law affecting surrogates and surrogates' courts, enacted by the Legislature, and it very greatly extended the jurisdiction of those tribunals, and, among other things, it empowered the surrogates, when issues of fact arose triable by jury either to send the issue to the Supreme Court for a trial or to themselves impanel a jury in their own court and try the case. We had very great doubt as to the wisdom of that provision, and though there was much conflicting opinion pro and con, we finally determined to recommend that the surrogate's courts shall continue to have the jurisdiction they at present enjoy, subject to the right

of the Legislature to modify or change it from time to time. If the experiment which has been entered upon prove satisfactory to the people, the Legislature of course will not be apt to interfere in it. If the result shall not be satisfactory, it is open to the Legislature to make the change.

In running down through these courts, I have neglected to speak of one of the most important questions, of perhaps greater importance than any of those I have touched upon, and that is the jurisdiction of the Court of Appeals. It was strongly urged upon us from some quarters that the way to the Court of Appeals should be made easier and broader and its jurisdiction should be open to include almost anybody who chose to appeal from the judgment of the Appellate Division to it, and that the court, when it had a case on appeal, should have jurisdiction over the law and fact. We revert to the determination of the Convention of 1894, which drew the sharp line of demarcation between functions of the Court of Appeals and those of the Appellate Division. It recommends that every suitor has a right to one plenary review of law and fact, and that that review should be had in the Appellate Division. We consider the Court of Appeals as a court of law created for the purpose primarily of settling the law of the State. We restrict its jurisdiction to the review of questions of law, save in two cases only: First, on appeals from convictions for murder, capital cases, where the appeal goes directly from the trial court to the Court of Appeals; and, second, to that peculiar class of cases which arise under the recent legislation, which enables the Appellate Division, in reviewing an appeal from the Supreme Court, to itself make new findings and enter a judgment different from the judgment appealed from. In that case the Appellate Division acts as the alter ego of the trial court, and we have recognized the right of the unsuccessful suitor there to plenary review in the Court of Appeals. With that exception, we affirm the principle that the Court of Appeals is a court of law and not a court for the review of questions of fact. There was in the Constitution of 1894, a provision which, when it was adopted, it was considered would withdraw from the Court of Appeals the consideration of a large number of cases which should not vex it, to the effect that it should not be open to the Court of Appeals to consider whether or not on the admitted facts of the case the plaintiff was entitled to recover; that is, whether there was any evidence whatever to support the judgment. That was a question of law. It had always been a question of law. The Constitution of 1894 declared it should not thereafter be treated as a question of law and they thought that thereby they would relieve the Court of Appeals of a great deal of unnecessary embarrassment. As a matter of fact,

the unbroken testimony of judges and lawyers and associations of the bar who appeared before us has been that it has worked more evil than good, and that it had only led the court to be astute to discover some technicality upon which they could reverse a judgment where in their opinion on examining the evidence it was apparent there was really no evidence to support the judgment, and we conclude it was better to relieve the court of the necessity of resorting to such technicalities, and that that provision should be stricken out of the article. With that exception, we have limited the jurisdiction of the Court of Appeals to the consideration of the following cases:

First, When the judgment is of death.

Second, From a judgment or order entered upon a decision of the Appellate Division which finally determined an action or a special proceeding directly involving the construction of the Constitution of the State or of the United States, or where one or more of the justices who heard the case dissents from the decision of the court, or where the judgment of the trial court is reversed or modified;

Third, From an order granting a new trial where the appellant stipulates that upon affirmance judgment absolute shall be rendered against him. Those are the only cases in which we recommend there shall be an appeal from the Court of Appeals as of right. But, we provide that the Court of Appeals itself may allow an appeal in any other case where a question of law is involved which, in its opinion, ought to be reviewed by it, and we vest that power in the Court of Appeals alone; not in the chief judge of the court, or in any judge of the court, but in the court itself, and we do not vest it in the Appellate Division. Why? Because it is intended that the power shall only be exercised where an unusual case clearly presents a question which the Court of Appeals thinks should be reviewed. The Appellate Division which has decided the case is not called upon to yield to the feeling that it ought not to deny a review of its own decision. Very many, or most judges, I think, hesitate to deny the right to appeal from their own decision, but the question should be presented to the Court of Appeals, if there is any question of law which could be made readily apparent, and that court can determine on a very brief inspection of the record whether or not there is a question which it should review. That is the practice which obtains in the Supreme Court of the United States, which is exercised every motion day, and applications for writs of certiorari are made there and briefs and petitions are filed, and I am told by the judges of the court that they go through these petitions very quickly and they can decide with a very brief inspection whether

there is a question that really requires consideration and they regard it as a very little burden upon them. Although at first, if this system is adopted, the court will find it perhaps a little burdensome, it will soon develop a system under which they can pick out cases where appeals should be allowed without any great amount of difficulty.

Now, there are two other questions of sufficient importance to be touched upon in this connection, and which should be mentioned, both local.

In the city of New York there are five counties. In each of those counties there is a county court clothed with civil — in four of those counties there are county courts clothed with civil and criminal jurisdiction. In Brooklyn there are four county judges, and in the Bronx, Queens and Richmond there is one county judge each.

In Brooklyn the county court practically tries no civil cases, although they have a large docket of civil cases, and a very large arrearage of civil cases. In the county of New York there is one court of general criminal jurisdiction analogous to the county court, to wit, the court of general sessions of the peace, having jurisdiction throughout the county of New York. There is also a city court of the city of New York which is a civil court intermediate the municipal court, which is the court of jurisdiction limited to five hundred dollars, until a recent act sought to increase it to a thousand dollars, and between that court and the Supreme Court there is a city court in the city of New York with jurisdiction limited to two thousand dollars.

Nothing could be more unscientific that in the same city that there should be in the same city six or seven different tribunals exercising this melange of criminal and civil jurisdiction. The judges of the court of general sessions have had their terms of office gradually increased to fourteen years, and their salaries gradually boosted up to the level of the Supreme Court salaries, seventeen thousand five hundred dollars a year; and they have plenary criminal jurisdiction, subject, of course, to that great reservoir of jurisdiction in the Supreme Court of the State. There are now seven judges in that court, and it was urged by some that that court should be absorbed into the Supreme Court, and that a separate division, a criminal division of the Supreme Court, should be established. It seemed to your Committee much more scientific and much more in conformity with the modern organization of courts, an organization which would enable the State to secure the utmost service from the judges of these various tribunals, to merge, as we recommended shall be done, all the criminal courts in the counties of the city of New York into one tribunal, and we recommend that from and after the first day of

January, 1917, following the precedent established by the Convention of 1894, when it merged the superior court of the city of New York, and the court of common pleas of the county of New York into the Supreme Court, enabling a year to elapse for the Legislature to make necessary enactments for the proper arrangements to be made incident to such a change,— we have recommended that from and after the first day of January, 1917, the jurisdiction of the court of general sessions of the county of New York be extended over the entire city of New York and that the county judges in the other counties become judges of the court of general sessions, and that the jurisdiction, the criminal jurisdiction of all of those courts be devolved upon the court of general sessions of the city of New York. So that from and after that day, there will be one court of general criminal jurisdiction in the city of New York, with judges chosen in the respective counties, holding terms in the different counties, under the jurisdiction of one presiding judge, to be chosen by the judges of the court; so organized that the entire force of the judges can be employed wherever they are needed in discharging the criminal business of the city of New York, which now vests in courts of that magnitude. In the same way we provide that from and after the same day the jurisdiction of the city court of the city of New York be extended throughout the city and in addition to the jurisdiction which it at present possesses there shall be devolved upon it the civil jurisdiction now vested in the county courts of the respective counties; and we make provision for choosing a sufficient number of judges to supply the need of civil judges of that court for the conduct of the civil business in those counties where the county judge will have become a judge of the court of general sessions. In that way the entire civil and criminal business of the city of New York will be,— other than that of the inferior courts,— will be vested in these two courts, and the jurisdiction shall extend throughout the city. The same has already been done by the Legislature with respect to the courts of lowest jurisdiction, that is, the municipal court, and with respect to the courts of lowest criminal jurisdiction, namely, the court of special sessions and the magistrates' courts; and we follow with respect to these courts what the Legislature has already done with respect to the courts of next lowest jurisdiction. So that it is not an experiment and it is only following in the line of progress that which has already been adopted successfully with respect to the courts of somewhat lower jurisdiction, and it is following the best examples of the most successful courts, including that court which is so constantly held up as a model by all the students of the organization of courts, the municipal court of the city of Chicago.

I hope that there may be evolved out of the judges of those tribunals some judge with the genius for judicial organization and conduct of judicial business which the chief judge of that Chicago court has. Your committee had the pleasure of hearing him one afternoon tell us at first hand about the organization and conduct of that court, and I think if we had had any doubts before of the advantages obtainable by an organization of this kind they were removed by the story of what that court has done and what could be done under the right sort of man as executive judge of a court of that kind. Of course, judges of that kind, like poets, are born and not made; and it may be that the city courts of New York will not evolve one; but, after all, if we furnish the proper machinery for the proper administration of justice, this Convention will have contributed all that within us lies, and we may say, as Nelson did when his fleet bore down on the French fleet at Trafalgar and he closed his telescope, "I have done all I can for England." In connection with the same thought, the adaptation of courts to meet modern views of the administration of justice, we have provided that the Legislature may create children's courts either by conferring jurisdiction upon existing tribunals or establishing other tribunals which may exercise jurisdiction over the delinquent children, not as criminal courts, but in accordance with modern humane ideas of caring for the children of the State as the wards of the State and not as criminals, and for the purpose of enabling them to carry out the work which is being done in other jurisdictions we provide that the Legislature shall have free power to devolve the necessary jurisdiction upon the children's courts and upon the courts of domestic relations. Finally we come to deal in connection with the administration of justice with one of the most troublesome ones, namely, the question of exemption from liability to jury duty. The exemptions from liability to jury duty have grown to such an extent that we have a large volume of testimony from the trial judges of this State that the due administration of our system of trial by jury is very seriously affected by the number of exemptions from liability to jury duty which relieves those members of the community who would be best fitted for the discharge of the important duty of jurors, and we have addressed ourselves to a consideration of what should be done to meet that evil. There we ran up against intrenched special privilege. Unfortunately it has become a well-rooted idea on the part of a number of our people that service of one kind or another should be rewarded by exemptions from the same requirements which are imposed upon those who enter the civil service of the State, or be relieved from liability to jury duty, as though jury duty has become a burden to be avoided rather than the privilege

of free men. There is no more clamorous or well-organized body of men in support of these exemptions than the volunteer firemen's associations of the State, and I suppose every member within hearing of my voice has received at least one bushel-basketful of letters from the volunteer firemen's associations of the State protesting the removal of the exemption from liability to jury duty they at present enjoy. The members of the National Guard, not those in active service, but those who have been honorably discharged, claim the same exemption, and there are others. We finally solved to our satisfaction at least — whether to the satisfaction of the Convention or not remains to be seen — this problem, by recommending that, except in the case of physicians and surgeons in active practice, exemptions should be limited to persons employed in public service and that no others should be exempt unless and except the judges empowered to frame the practice rules of the State, the civil practice rules, should so prescribe.

In other words, we have felt that the judges of the courts who were brought in daily contact with this problem should determine what class of persons should be relieved of jury duty, rather than that it should be left to the Legislature. Finally we have a provision relating to the Torrens Act which I will not stop to discuss now, and there are a number of minor details that will be presented as the various sections are read. I have tried to briefly sketch over the general items that we have. As a net result, so far as the judicial establishment is concerned, we recommend only the following increase in the number of judges: In the First District, two shall be elected so as to supply the number which we certainly shall need with the added designations to the Appellate Division. We provide for four city court judges in connection with this expansive scheme to be chosen a year from next fall, two in Kings county, one in Bronx county and one in Queens county. We provide for one for the county of Richmond in the measure as reported, and I think it will have to be modified in connection with some suggestions that have come. We have provided for the election of one surrogate there in lieu of the county judges, who will become a member of the general sessions court, but I think we will suggest a modification in that section. Finally we provide that the Legislature shall be authorized to add one general session judge for Bronx county and one city court judge for Kings county. These are the only increases in the judicial establishment that we recommend, except increases which will result in the Supreme Court by transforming the three Supreme Court judges now sitting by designation in the Court of Appeals into permanent Court of Appeals judges and their places in the Supreme Court will have to be filled. With this number of judges, this small increase in

the number of judges, with the changes in the jurisdiction, and with these modifications in the machinery of the court, the mobilizing, if I may say so, of the entire judicial force, it is the belief of your committee that any just excuse for the undue delays in the administration of justice will be effectively removed. Now, the committee was unanimous in this report, with the exception that my brother Brackett reserved the right — some reservation as to one or two matters that troubled him somewhat, but which he may speak of when we come to it — I think none of any serious moment.

Judge Dunmore differed with the committee on one point only. He will present his minority report when I have finished. His objection was that we had not provided that the Court of Claims should have jurisdiction to hear and determine the conflicting claims of claimants against the State to an award; as, for instance, if the State appropriated a piece of real estate and the Court of Claims determined its value and made an award, Judge Dunmore desired that the Court of Claims be clothed with jurisdiction to hear and determine conflicting claims to that award. In the opinion of your committee, those were questions with which the Court of Claims had no concern. They were matters affecting the general jurisdiction of a court of general jurisdiction, might involve the question of title to land and all the rights inherent therein that might require trial by jury or the exercise of plenary equity powers, and in our opinion those matters were not proper to confer upon the Court of Claims.

Judge Dunmore will present his own views and I have merely outlined the position which the committee took with respect to that subject. I think, gentlemen, with this introduction, we are prepared to enter upon consideration of the provision, section by section. Judge Dunmore will make such remarks regarding his minority report as he desires.

Mr. Quigg — In the report of the Committee what is done with respect to the appointment of referees? Will you explain that a little?

Mr. Wickersham — You mean official referees?

Mr. Quigg — Yes, official referees — I mean anything in the nature of a court, created by a court, not elected by the people. Is there anything in the report about that?

Mr. Wickersham — Well, we recommend the appointment by the Appellate Division, or by justices of the Supreme Court in districts, of standing Supreme Court commissioners who may act as commissioners in the condemnation of real estate in lieu of the commissions which at present are constituted. There are some two hundred and twenty commissions to-day considering the condemnation of lands by the city of New York, each commission composed

of three persons — one lawyer, usually, and two business men — sitting once a week, for two hours, and running along through years, to the great delay of suitors. That constitutes, I think, one of the very great evils we have to deal with, and it is dealt with, in part, by the Bill of Rights Committee in their report and by the Judiciary Committee, in part, in its report, by creating this body of standing referees or commissioners to whom the court may refer these matters and who are to give their whole time to this work and sit continually and dispose of them, instead of sitting a few hours a week every other week at "X" dollars per day, to be charged to the city. Then we have continued, with distinct limitations which I will discuss when we come to that section, the office of official referee which was created some years ago, first, for the benefit of retired Supreme Court judges, and then extended to judges of other courts. The condition of the statutes and so on, I will speak of when we come to it more in detail. We have made those provisions, Mr. Quigg, in this report.

Mr. Olcott — If General Wickersham will answer a question,— and I am also indebted to Judge Dunmore, if he does not mind my preceding him — I have noticed, General Wickersham, something that seemed to me to be an inconsistency, which I would have pointed out before if I had observed it. Section 20, on page 26 of the measure, which is your disposition of the present Court of General Sessions, provides, if I may read it, shortening it: "The Court of General Sessions" — then going down to line 11 — "shall have the same jurisdiction throughout the city of New York under the name of Court of General Sessions of the city of New York as it now possesses within the county of New York". Then, if I may ask you to turn back to page 6, where you were speaking of the jurisdiction of the Appellate Term, down at line 18, or beginning at line 20, if you please — "All appeals from judgments and orders made by the city court of the city of New York" — then go down to line 24 — "and by all other inferior or local courts except courts held by justices of the peace —"

Mr. Wickersham — I anticipate what you are going to ask and I am going to correct it when we come to that section. Judge Rosalsky called my attention to that. It was an oversight and I shall correct that when we come to that section.

Mr. Olcott — I am extremely sorry — I did not know your attention had been called to it.

Mr. Wickersham — It was not noticed until after the report was completed.

Mr. Olcott — City magistrate should be written in.

Mr. Wickersham — More than that.

Mr. Olcott — Whatever you choose.

Mr. Wickersham — There are two matters that I will take up when we come to that.

Mr. Olcott — I am very much obliged. I am sorry to have taken up the time.

Mr. Dunmore — Gentlemen of the Committee: It is with the deepest regret that I do not feel that I can conscientiously concur in the entire report presented by the majority of the Judiciary Committee. I realize how conscientiously, how earnestly and how faithfully that committee has worked to perfect the judiciary article. I realize that they have sent to far-away cities and have sought every source of information that they believed would throw light upon the problems involved; and, by reason of the earnest effort they have made to perfect this article, I sincerely regret that I cannot join with the majority of the committee in recommending its adoption. I did not make the minority report for the purpose of being arbitrary, nor because I desired to have my own way, but I felt that a principle was involved that I could not surrender conscientiously without a struggle. I felt that I would be unfair to myself, unjust to the people that I represent and unfair to my associates in this Convention if I did not call attention to the evils which I think exist in the Court of Claims, so that you may, if you find, as I believe, there are evils, correct this article in that respect before it is too late. And I say this with the most profound respect for the judgment, for the learning and for the fair intentions of every member of the committee who signed this majority report. I most heartily concur in nearly every provision contained in that report; but as to the jurisdiction that is conferred by this article upon the Court of Claims, I feel that I must dissent and I desire to offer this amendment.

Mr. Wickersham — Mr. Chairman, if I may suggest to Judge Dunmore, would it not be better to withhold that amendment until we come to the section to which it would apply?

Mr. Dunmore — I did not suppose that it would be acted upon but I wanted the members of the Convention to know just how I wished to amend it.

The Chairman — If there is no objection, the amendment will be read and then withheld until the committee considers the particular section involved.

The Secretary — By Mr. Dunmore: On page 9, line 18, after the word " provide " insert " including the power to determine the share of conflicting claimants in any award ".

Mr. Dunmore — I think it is fair to myself to say to this committee that the minority report does not represent my own views alone, but, as expressed either in the vote in the committee or expressed to me personally, there were six members of the committee who concurred in this provision to enlarge the jurisdiction

of the Court of Claims. One member of the committee was the chief judge of the Court of Claims and naturally his modesty prevented his expressing his views. There were one or two members of the committee who were absent when the vote was taken, so, as I understand it, the majority in favor of not conferring that jurisdiction was very small in the committee. There has been a great deal of complaint on the part of claimants as well as general criticism on the part of the press on account of the delays and expense of getting payment from the State for property taken by the State from citizens against their will. The public expects from this Convention that it shall provide a remedy for those evils, as far as possible. This judiciary article makes absolutely no change in the Court of Claims except that it puts it under the Constitution, so as to take it out of politics and so that it may not be made the football of partisans hereafter. That purpose, of course, is commendable but, as the evils which I claim exist, putting it under the Constitution and thereby depriving the Legislature of the power of correcting those evils raises a question in my mind as to whether putting it under the Constitution is a step forward or a step backward.

Now, what does this article do? It creates under the Constitution a court of record consisting of three judges of State-wide selection and then gives only the jurisdiction or power of a board of auditors. It is given power, as between the claimant and the State, to determine what the State shall pay for property worth millions of dollars; but it is not given power, as between conflicting claimants, to determine their respective shares of an award, however small each share might be. Many properties are taken by the State upon which are easements of right of way, easements of right of flow of streams, rights to drive logs down streams, telephone lines, rights to transmit electric power, mortgages, judgments, leases for years, etc. The Court of Claims is not given power to determine the share in an award of any such claimant.

It was suggested in the Committee that giving the Court of Claims power to determine shares of disputing claimants might deprive those claimants of the right of trial by jury but the majority had no compunction in depriving the owner of the property of the right of trial by jury as between him and the State. And why, as to the same subject matter, should not the same method be adopted as between claimants? As has been said by one of the Committee, the entire value of an award is the sum of all its parts. If, therefore, the Court of Claims can take evidence as to the value of the different parts, specify their respective value and make the sum of them the amount of the award, is not that method more likely to do exact justice between the claimants than

to have the Court of Claims make only the entire award and compel the claimants to go into another court which may, from an entirely different point of view, divide the award between the claimants? Citizens who have claims against the State, as was stated by another member of the Committee, are entitled to have just as good a court to determine the amount of that claim as are citizens who have claims against individuals or other corporations. Either the Court of Claims is good enough to be trusted with the determination of conflicting claims to an award or it is not. If it is good enough to be so trusted, then, in all fairness to the citizens whose property is taken by force by the State and against their will, a court good enough to be so trusted should be provided. Personally, I believe the judges of the Court of Claims are good enough to be so trusted. It was suggested in the Committee that to give power to the Court of Claims to determine the value of conflicting claims would be conferring equity powers upon the Court of Claims. In reply to that, I say that equity powers are conferred upon a single judge of the Supreme Court sitting in special term. Is it more dangerous to confer equity power upon three judges sitting together in the Court of Claims — judges that might, and I believe do, average up in learning and ability with justices of the Supreme Court, than upon a single justice sitting at a special, especially when the decision of three judges sitting in the Court of Claims may be reviewed in the same manner as the decision of the one judge sitting in special term. If, therefore, an error is committed by the Court of Claims, it can be corrected on appeal. We have given the Surrogate's Court power to determine all questions necessary for the final determination of all matters pending before that court. Why not give the Court of Claims like power? Is it any less worthy of our confidence? Many of the awards where conflicting claims exist are for only a few hundred dollars. I know of one of less than one hundred dollars. If this article is not amended so as to confer this additional power upon the Court of Claims, and if the existing method is continued in that court, a claimant will find himself, after all his litigations necessary for a final determination, in the position of a client of Sampson Levy.

Sampson Levy, as you perhaps know, was the wit of the Philadelphia Bar. On one occasion he had a claim in the admiralty court and he associated another lawyer with him. After a trial they obtained a judgment for eight hundred dollars. When Levy got the money he sent for his associate and his client that the money might be divided between them. He placed his associate on the opposite side of the table and his client at the end and he started the division. He first laid down one hundred dollars in

front of his associate, and said, "There is one hundred for you". As he laid down another hundred in front of himself, he said "There is a hundred for me", continuing "There is a hundred for you and here is a hundred for me". As he was laying down the last hundred dollars in front of himself, his client said, "Great Scott! Mr. Levy, what am I going to get?" Levy turned upon him with apparent severity and said, "Why, you have the honor of the victory, which is above all price!" Unless this article is amended, giving power to the Court of Claims to determine the amount of conflicting claims, when the claimants have finished all the litigations necessary for a final adjustment so that the State shall have paid over the money, then the State will have the claimant's property, the lawyers will have the money, and the claimants will have the honor of the victory. I wish to add only one word further. We are a Convention of lawyers. There has been a demand on the part of the public that legal procedure be simplified so as to avoid unnecessary delays and expense. We have done nothing to avoid delays or expense in the Court of Claims. Our critics may therefore say, "Why, the members of that Convention were lawyers. They did not wish to simplify the procedure. They wanted to leave it so as to make as many law-suits as possible." Can we, as lawyers, afford to furnish to any group of people who may oppose the adoption of this Constitution that argument, especially when we know every word of it is true except the motive? We all know that no member of this Convention is actuated by any such motive but the fact that the present article will cause an unnecessary multiplicity of suits is, nevertheless, true. A rule similar to the one we asked for prevails in many States. While the language in the different States varies, the general rule is that the Legislature has full power to give the determination of claims against the State to a court having plenary power to dispose of all questions before it except in cases where the Constitution itself gives such power.

The rule referred to prevails in the following states: Delaware, California, Ohio, Tennessee, Wyoming, North Dakota, Pennsylvania, Nebraska, Arizona, South Dakota, Washington, Wisconsin, Kentucky, South Carolina, Nevada, Florida, Oregon, Indiana, Idaho, North Carolina and Louisiana. For these reasons, I ask this Convention to adopt the amendment which I have proposed, so as to give to the Court of Claims power to determine the amount of conflicting claims to an award, and so as to avoid the multiplicity of suits and the unnecessary expense. Now, these delays, Mr. Chairman, are very serious. I will not take your time to mention but two. Up in the town of Delta, in the county in which I live, the State took from an old couple a home which had been

the savings of a lifetime. They had by their savings acquired this little property upon which they expected to spend their declining years, and by the cultivation of the soil were able to make a livelihood. The State took the property. They were forced out of possession, without a dollar in the bank, and without any savings excepting their home. It was years before they could get a dollar from the State in payment of that property, and in the meantime this old man was compelled to work by the day to prevent himself and his wife from becoming public charges. Another case occurred over in Herkimer county, the county adjoining the one in which I live, where an old couple had saved money and acquired a little home. The State wanted the property. It served the necessary papers and took it; and they were forced out of possession. This old man, who was seventy years old or upwards, was compelled to go out to work by the day to prevent himself and his wife from becoming public charges. That continued for two or three years, and one cold November day, when the old man was working with pick and shovel in a ditch, he caught cold, contracted pneumonia and died. He never lived to realize a cent from the State for his property. Now, these are only a few of the examples of the suffering which has been brought upon citizens of this State whose property has been taken by the State and where the delay in getting the pay from the State, while not perhaps entirely due to this lack of jurisdiction, yet it was caused in large part by this lack of jurisdiction in the Court of Claims.

Now, Mr. Chairman, I have too much confidence in the fairness, in the good judgment, of the Judiciary Committee to believe that if they had known of this evil they would not have voted to correct it. I have too much confidence in the members of this Convention to believe that they will permit that evil to go uncorrected when amending this article. It is no criticism upon the Committee to say that very many of the members of that Committee live in New York. They practice in larger courts and have larger amounts involved than are involved in the Court of Claims, and by reason of the lines in which their practice has taken them, they have not been brought in contact with the questions arising in the Court of Claims, and were not familiar with the evils of the system. I have too much confidence in the fairness of those men to believe that they would not have voted to correct that system, had they known of the evils that exist. For these reasons, Mr. Chairman, I hope this amendment will be adopted.

Mr. Wickersham — I ask that the measure be now taken up section by section.

The Chairman — We will proceed with the consideration of the special order section by section. The Secretary will read the first section.

The Secretary — Section 1. The Supreme Court is continued with general jurisdiction in law and equity, subject to such appellate jurisdiction of the Court of Appeals as now is or may be prescribed by law not inconsistent with this article. The existing judicial districts of the State are continued until changed as hereinafter provided. The Supreme Court shall consist of the justices in office on the first day of January, one thousand nine hundred and sixteen, and successors of the justices transferred to the Court of Appeals as in this article provided, and of two additional justices who shall reside in and be chosen by the electors of the first judicial district, and their successors, together with such additional justices as may be authorized by the Legislature pursuant to the provisions of this article. The successors of said justices shall be chosen by the electors of their respective judicial districts. The Legislature may alter the judicial districts once after every enumeration under the Constitution, of the inhabitants of the State, and thereupon reapportion the justices to be thereafter elected in the districts so altered. The Legislature may from time to time further increase the number of justices in any judicial district except that the number of justices in the first, second and ninth districts shall not be thereby increased to exceed one justice for each eighty thousand, or fraction over forty thousand of the population thereof, as shown by the last State or federal census or enumeration, and except that the number of justices in any other district shall not be increased to exceed one justice for each sixty thousand or fraction over thirty-five thousand of the population thereof, as shown by the last State or federal census or enumeration.

Mr. Lincoln — I would like to call the attention of the Chairman of the Committee on Judiciary to the fact that it is understood in this Convention, I believe, that the Committee on Legislative Organization proposes to abolish that provision of Section 4 of Article III relating to State census.

Mr. Wickersham — Relating to what?

Mr. Lincoln — The State census, the State enumeration, and there seem to be several provisions in this section of the Constitution which depend upon that State enumeration.

Mr. Quigg — I am a member of the committee to which you refer and I don't know of any such proposition.

Mr. Lincoln — Well, I am sure I do not, and I am not a member of that committee, but I have understood that was under consideration.

Mr. Wickersham — I would say that the language to which

you refer is that which is in the present Constitution. If a change is made then that is one of the things which will be corrected for the sake of uniformity when we come to put together all the different articles of the Constitution. I understand there is no change up to the present time, nor has any change been agreed to and none is made in any report before this body, and, therefore, of course, we could not assume that any such change would be made, and therefore we took the present language in the Constitution. If the change should be made, it would then be in order under some proper motion to make a corresponding change in this article.

Mr. Lincoln — May I call attention to the fact that, notwithstanding it is a part of the old Constitution, there seem to be about three different methods adopted for determining the boundaries of judicial districts, or the apportionment of judges in the judicial districts. First, in line 13, upon page 2, according to the enumeration under the Constitution, that is, the State enumeration. Then, in line 21, as to the number of judges, and in line 25 as to the number of judges, according to the State or federal census, or enumeration. Then as to the boundaries of judicial departments, in section 2, that they are to be located every ten years. It seems to me that that is something which might be very properly made more uniform.

Mr. Wickersham — Well, Mr. Chairman, we took the language as it exists in the Constitution to-day, and it has been there for twenty-one years, and there did not seem to be any special reason for change. If a change is suggested by the committee to which you referred, then, of course, I think it would be well to conform this to such a change. As it is, we thought we would simply leave the language as it stands, as there seemed to be no special reason for changing.

Mr. Austin — In reading this first section, some doubt has arisen in my mind as to the meaning of line 11, on page 1, the words "successors to the justices transferred to the Court of Appeals as in this article provided" — Now I don't wish to be captious but it does certainly seem to me that the membership of the Supreme Court ought to be set forth in language about which there shall be no question, and possibly there would be no question about this; but section 9 provides for the transfer — it does not use the word transfer, but says "the three justices of the supreme court now serving as associate judges . . . shall be associate judges of the court of appeals" and further on in the section it is provided that "not less than four nor more than six justices of the supreme court shall be designated to serve as associate judges of the court of appeals, and that during such period while so serving they shall be relieved of their duties as justices of the supreme

court" — now it seems to me that there is some doubt as to whether this provision for the successors of judges transferred as in this article provided — some doubt as to whether that applies to the three justices who are to be judges of the Court of Appeals or to the justices who are to be assigned to the Court of Appeals and from the duties of Supeme Court justices are to be relieved.

Mr. Wickersham — Mr. Chairman, I did not think, nor do I think now, there was any real question about it. The three justices at present assigned to the Court of Appeals are to become judges of the Court of Appeals. Their successors — they cease to be justices of the Supreme Court and that leaves three vacancies in the Supreme Court and this section says their successors shall be chosen in the manner provided. Now the associate justices assigned do not cease to be justices of the Supreme Court although during the period of their temporary service in the Court of Appeals they are relieved from the performance of their duties as justices of the Supreme Court. I think the line of demarcation is very clearly drawn and it is following in that regard the provisions of the present Constitution, in the latter part, with respect to the designation of the justices of the Supreme Court to sit in the Court of Appeals. Is my answer satisfactory?

Mr. Austin — My understanding of what the Committee intended to do, Mr. Wickersham, is exactly as you have explained it, and it may seem a little bit captious of me in making a criticism —

Mr. Wickersham — No one would think any criticism you made was captious, Mr. Austin, but sometimes on first reading the matter does not seem so clear as it does after you consider — as you say, the intention was obvious — just consider for one moment whether any change in language is necessary. There are three judges to-day sitting by assignment in the Court of Appeals, under the provisions of the present Constitution which provides that the Governor may designate judges to sit in the Court of Appeals to serve — as the language goes — to serve as judges of the Court of Appeals.

Mr. Austin — Now it seems to me, right there, if I may say so, that one so inclined might say "transferred to the Court of Appeals — transferred to the court, but not to be associate justices of the court."

Mr. Wickersham — But when you come to the 9th section of this provision, you see that we go further and you see that the Court of Appeals is continued and the three judges of the Supreme Court now serving as associate judges of the Court of Appeals by designation of the Governor would be associate justices of the Court of Appeals. In other words, the Court of

Appeals is to be composed of ten permanent judges and at the beginning those judges shall be the seven heretofore elected and the three Supreme Court justices heretofore designated and now sitting in that court. Then when you come to the further assignment the provision is — of course if there be any possible question about it, there might be inserted in page 13, the three justices now serving shall be associate judges for the expiration of the terms for which they respectively were elected justices of the Supreme Court, and thereupon the vacancies so created shall be filled as heretofore provided — that would make assurance doubly sure if necessary.

Mr. Westwood — It could be done much more easily, if anything is desirable, by the insertion of the word *three* before the word justices on page 1, line 11 — the insertion of the word *three*.

Mr. Wickersham — Yes, yes; I have no objection to that.

Mr. Austin — I simply wanted to call attention of the chairman and the Committee to it, as it struck me and I will ask one more question, Mr. Chairman, if I may.

Do you think that upon the transfer of those three judges to permanent membership in the Court of Appeals the Governor would have the power of temporary appointment to fill the vacancies until election the following November? That does not seem to be covered here.

Mr. Wickersham — It would create three vacancies, and I presume he would, I presume he would.

Mr. Austin — I should personally have some objection in this case to allowing the Governor to make those three appointments, because it comes pretty nearly being direct primary by gubernatorial appointment.

Mr. Wickersham — Well it is a question of whether you prefer to have it by "gubernational appointment" or by post card canvass — I prefer the former. I am perfectly willing, if it would make it any clearer, to insert the word "three" before justices, I hardly think it necessary, but if it would make it any clearer and to remove any possible doubt we might insert the word "three" before "justices" in line 11.

Mr. Brackett — Mr. Chairman, in this Section 1 — I hope you will not press it separately until we reach 9, because Section 9 does violence to Republican government by transferring the present three very eminent judges of the Supreme Court who are assigned to the Court of Appeals, by the adoption of this Constitutional Amendment, to the latter court. It is a thing that ought never to be done. They ought to be elected just like anybody else and that ought to be settled by our consideration of that section to-night before the first section is pressed for passage, or perhaps

Section 9 ought to be changed and Republican system substitution, that is a system of election.

Mr. Wickersham — Well, Mr. Chairman, the trouble with the suggestion of Mr. Brackett is that every one of these sections dovetails into every one of the others, or may dovetail into every one of the others. Now I think we could settle this particular question just as well in Section 1 as in Section 9. I won't press it to a vote to-night, Senator Brackett, but what I meant to say before we finally adjourn was, and I would like to present it for consideration to the members present to-night, that is that we have provided that the three judges who are now sitting in the Court of Appeals, who, under the existing Constitution are to sit there until the end of the terms for which they have respectively been elected, shall simply be continued *eo nomine* judges of the Court of Appeals instead of *eo nomine* assigned to the Court of Appeals during the remainder of the term during which under the Constitution they are to sit in that court, and it seemed to the majority of the committee that that was a very much better way to preserve the continued integrity of the court than to provide for the election of three new men to that body.

Mr. Brackett — Mr. Chairman, I now move for a mandamus to compel my honored leader to move to adjourn.

Mr. Wickersham — I was about to say, also, Mr. Chairman, that the hour had arrived for adjourning and I move that we now arise, report progress and ask leave to sit again to-morrow.

The Chairman — The question is on the motion of Mr. Wickersham that the committee do now rise, report and ask leave to sit again to-morrow. Those assenting will say Aye, opposed No. The motion is carried. (President Root resumes the Chair.)

The President — The Convention will come to order.

The Chairman — Mr. President, the Committee of the Whole has had under consideration special order No. 61, begs leave to report they have made progress and asks leave to sit again.

The President — The question is on granting the leave. All in favor of granting leave to sit again will say Aye, opposed No, and leave is granted.

Mr. Wickersham — Mr. President, I move that we adjourn.

The President — It is moved that the Convention do now adjourn. All in favor will say Aye, contrary No. The motion is carried and the Convention stands adjourned until 10 o'clock Thursday morning. Whereupon at 10:35 p. m. the Convention adjourned to meet at 10 o'clock a. m. Thursday, August 19, 1915.

THURSDAY, AUGUST 19, 1915

The President — The Convention will please be in order. Prayer will be offered by the Rev. Walter T. Bazaar.

The Rev. Mr. Bazaar — In the Name of the Father and of the Son and of the Holy Ghost, Amen. May the Almighty Lord God grant us His blessing; may He inspire us with the spirit of justice and wisdom; may He grant that we may perform our duty in all things according to His Holy Will and for the good of our people. Let us repeat the prayer He has taught us: Our Father, Who art in Heaven, hallowed be Thy Name. Thy Kingdom come, Thy will be done, on earth as it is in Heaven. Give us this day our daily bread. Forgive us our trespasses as we forgive those who trespass against us, and lead us not into temptation, but deliver us from evil. In the name of the Father and of the Son and of the Holy Ghost, Amen.

The President —Are there any amendments to be proposed to the Journal as printed and distributed? There being no amendments proposed, the Journal stands approved as printed. Presentation of memorials and petitions.

Mr. Brackett — There is a matter that I feel I must bring to the attention of the Convention. I had debated whether it ought to be done under a question of personal privilege, but, on thinking it over, I feel sure that it is not a privilege personal to myself for I surely am excepted from the situation. It may be that I ought to submit it as a question of personal privilege to reach some other member of the Convention but I shall submit it in this way and leave it to the judgment of the Chair and of the Convention itself as to what order of business it should be taken up under. I feel quite sure that the Convention will want an examination, by committee or otherwise, to ascertain whether or not the suggestions contained in the communication are correct. My communication closes with these words: "It looks as though the delegates to the Constitutional Convention are, a majority of them at least"— and that is where I feel that I come in as being excepted —"are stuck on themselves, and the people be damned!" I submit it for the consideration of the Convention.

The President — Referred to the Committee on Bill of Rights. Any further memorials or petitions?

Mr. Marshall — Mr. President, I object to its being referred to the Committee on Bill of Rights. I really believe it belongs to the Committee on Privileges and Elections, which thus far has had no functions to perform. I therefore suggest a reference to that Committee.

Mr. Wickersham — Mr. President, I suggest that it may be regarded as a special privilege and therefore should go nowhere.

The President — The Chair thinks that the importance of the communication requires that it remain with the Committee on Bill of Rights. Any further memorials or petitions? Communications from the Governor and other State officers. Notices, motions and resolutions. The Secretary will call the roll of districts.

Mr. Mereness — I offer the following resolution, which I assume will give rise to debate and therefore will have to lie over under the rule.

The Secretary — By Mr. Mereness: Resolved, That the Committee on Revision and Engrossment be discharged from further consideration of Proposed Amendment No. 789, Int. No. 708, entitled: "Proposed Constitutional Amendment, To insert in the Constitution a new article, in relation to the conservation of natural resources;" that said article be amended as follows: Insert at the end of Section 2: "The department may authorize the sale by the State of lands owned by it not forest lands and not within or contiguous to a State park, and excepting the islands in and lands adjacent to Lake George. The proceeds of such sales shall be used for the purchase of land within the State parks." And, so as amended, that the same be printed and recommitted to the Committee on Revision and Engrossment.

The President — That will lie over under the rules. The call will proceed.

Mr. Schurman — By the unanimous instructions of the Committee on Education, I desire to present an amendment. I suppose it will take this form. I move to discharge the Committee on Revision and Engrossment from further consideration of Proposed Amendment No. 818, Int. No. 698, and to recommit the said Proposed Constitutional Amendment to the Committee on Education, with instructions to amend as indicated, to report forthwith with amendment, the proposition to maintain its place on the calendar.

The Secretary — By Mr. Schurman — Proposed Constitutional Amendment No. 818, Int. No. 698, to discharge the Committee on Revision and Engrossment from further consideration thereof, to recommit the same to the Committee on Education, with instructions to amend as indicated, to report forthwith with amendment, the proposition retaining its place on the calendar: On page 1, line 4, strike out the words "secular education of children as a state function" and in place thereof insert the following: "Education of children in its free common schools and shall exercise such supervision and control elsewhere than in such schools as it now possesses."

The President — Is the Convention ready for the question? All in favor of the resolution say Aye, contrary No. The resolution is agreed to.

Mr. Low — The Committee on Cities was instructed to report this morning. Owing to the fact that we were unable to meet until last evening, I am only in a position to report progress; but I am very much pleased to report encouraging progress and I think we should be able to make our report in due form shortly.

Mr. J. L. O'Brian — The Committee on County Government presents the following report and submits the following constitutional amendment.

The Secretary — Mr. O'Brian from the Committee on Counties, Towns and Villages, Their Organization and Government, to which were referred several Proposed Constitutional Amendments in relation to changes in the form of county government, reports that the Committee has held a number of hearings on them, and on the subject-matter embraced in the several Proposed Constitutional Amendments. It has also made a careful study of Article III and Article X of the present Constitution, which contains provisions relating to the government of counties and the powers, duties and functions of various county, town and village officers. The Committee reports by Proposed Amendment, entitled: "Proposed Constitutional Amendment, To amend Article III and Article X of the Constitution in relation to the form of county government, and to the powers and duties of certain county, town and village officers." Second reading. To amend Article III and Article X of the Constitution, in relation to changes in the form of county government and of the powers and duties of certain county, town and village officers.

The President —Any special disposition of this bill to be moved? Referred to the Committee of the Whole.

Mr. Cullinan — Mr. President, the Committee on Suffrage makes the following report.

The Secretary — Mr. Cullinan from the Committee on Suffrage, to which was referred Proposed Amendment introduced by Mr. Wiggins, No. 51, Int. No. 51, entitled, Proposed Constitutional Amendment, To amend Section 1, Article II, of the Constitution, to change the length of residence in a county of a voter from four months to thirty days, reported in favor of the passage of the same with the following amendment: On page 1, line 4, strike out the bracket before "thirty days" and insert bracket after the word "last" on same line.

The President —Any special disposition desired of this amendment? Referred to the Committee of the Whole. Any further report of standing committees? Reports of select committees. Third reading.

Mr. Wickersham — I move that the order of third reading be suspended for to-day.

The President — All in favor of the motion say Aye, contrary No. The motion is agreed to. Special order. General orders. The Convention under the head of special order of the day will go into the Committee of the Whole for the further consideration of the judiciary article. Will Mr. Wagner resume the Chair?

Mr. Wagner resumes the Chair.

The Chairman — The Committee will continue the consideration of Special Order No. 61. Section 1 is now under consideration.

Mr. Wickersham — Mr. Chairman, when the Committee rose last evening we had about finished consideration of Section 1. There was one suggested amendment — I don't know that it was formally made by Delegate Austin or not. I see no objection to amending line 11, page 1, by inserting the word "three" before "justices." I think possibly it makes it a little clearer and as that would remove the point of criticism I therefore move to make that amendment. The only other question on that section which was raised was the question which the delegate from Saratoga raises regarding the justices of the Supreme Court.

Mr. Brackett — I only wish to assure my honored leader that I make no motion on the subject, but I am going to call attention to other bad things in the report, simply for the purpose of making the record. I shall not make a motion during the whole report.

Mr. Wickersham — Well, then, Mr. Chairman, I move the adoption of the first section as amended by the insertion of the word "three" before "justices" in line 11, page 1.

The Chairman — The question is on the motion of Delegate Wickersham that page 1, line 11, be amended by adding before the word "justices" the word "three." Those in favor of the motion will say Aye. Opposed, No. The amendment is adopted.

Mr. Wickersham — I now move the adoption of the section as amended.

The Chairman — Those in favor of the adoption will signify by saying Aye. Opposed, No. The section is adopted. Section 2. The Clerk will read.

The Secretary — Section 2. The present division of the State into four judicial departments is continued. Once every ten years the Legislature may alter the judicial departments, but without increasing the number thereof. They shall be bounded by county lines, and be compact and equal in population as nearly as may be. The appellate divisions of the Supreme Court are continued and shall consist of not less than ten nor more than twelve justices in the first department, seven justices in the second department and

five justices in each of the other departments. The justices heretofore designated shall continue to sit in the appellate divisions until the terms of their designations respectively expire. The appellate division in the first department may sit in two parts, in which case the presiding justices shall assign the justices who from time to time shall sit in each part. In each appellate division or part thereof four shall constitute a quorum, and the concurrence of three shall be necessary to a decision. No more than five justices shall sit in any case. The Governor shall designate the presiding justice of each department, who shall act as such during his term of office and shall be a resident of the department. The other justices shall be designated by the Governor from all the justices elected to the Supreme Court for terms of five years or the unexpired portions of their respective terms of office, if less than five years. From time to time as the terms of the designations expire, or vacancies occur, the Governor shall make new designations. A majority of the justices so designated to sit in the appellate division, in each department, shall be residents of the department. Ten justices in all shall be designated to sit in the appellate division in the first department, but in case the presiding justice thereof at any time shall certify to the Governor that the interests of justice so require he shall designate two additional justices to sit therein. In case of the absence or inability to act of a justice of any appellate division, the presiding justice thereof may assign any of the justices of the Supreme Court to sit in the appellate division during such absence or inability, but no justice shall be so designated to sit longer than four months in any year. In case the presiding justice of any appellate division shall certify to the Governor that one or more additional justices are needed for the speedy disposition of the business before it the Governor shall designate such additional justice or justices. Whenever the appellate division in any department shall be unable to dispose of its business within a reasonable time, a majority of the presiding justices of the several departments at a meeting called by the presiding justice of the department in arrears shall transfer such number of pending appeals as the presiding justices may determine to be necessary from such department to any other department for hearing and determination. No justice of the appellate division shall, within the department to which he may be designated to perform the duties of an appellate justice, exercise any of the powers of a justice of the Supreme Court, other than those of a justice out of court, and those pertaining to the appellate division, or to the hearing and decision of motions submitted by consent of counsel, but any such justice, when not actually engaged in performing the duties of such appellate justice in the department to which he is designated, may hold any term of the Supreme

Court and exercise any of the powers of a justice of the Supreme Court in any county or judicial district in any other department of the State. The appellate division, except as herein provided, shall have the jurisdiction now exercised by it and such additional jurisdiction as may be conferred by the Legislature. On appeals from judgments of conviction in criminal cases, the appellate division may reduce the sentence imposed by the trial court or judge. It shall have power to appoint and remove a reporter. The justices of the appellate division in each department shall have power to fix the times and places for holding the terms of the Supreme Court therein, and to assign the justices in the departments to hold such terms.

Mr. Dykman — The Chairman of the Committee has asked me to make a short explanation of the changes in the appellate division by this section. We make no changes in the appellate divisions in the third and fourth departments. We make a change in the second department, and a substantial change, perhaps, in the first department. Let me first make a comparison of the amount of business done in the appellate division in the four departments treating only of appeals from judgments and orders and not motions originally made. In the Third Department about 400 appeals were heard last year; in the Fourth Department, some 540; in the Second Department, 1,100; and in the First Department, 1,500. In the Second Department we increase the number of justices sitting in the appellate division from five to seven. At the present time five judges in the Second Department are permanently appointed to that court and two are supernumeraries. The result is that while the judges permanently appointed are supposed to be of somewhat greater dignity, from their permanent tenure, they are appointed only for five years; while the supernumeraries, appointed only until the calendar is reduced, practically are indefinitely appointed and hold for the whole term for which they are elected. Now this change is to have seven judges who are actually at work in the Second Department, appointed for the term of five years. This has the unqualified approval of the presiding judge in the Second Department, Mr. Justice Jenks, and of every lawyer in the Second Department who appeared before the Committee. In the First Department there is a very remarkable body of judges, led by a most remarkable presiding judge who has made the work of the Appellate Division his entire life and has given up everything to the work of that department. These men have succeeded in performing almost a superhuman task. They are up with their calendar and are disposing of between fifteen and sixteen hundred cases a year. A presiding judge and other justices sitting in that court, leading members of the Bar in

the First Department, have appeared before the Committee and the result is this: We have increased from seven to ten the number of justices to be permanently assigned to that court. If the court continues to sit in one part only, that will enable it to sit one more week a month and will practically give one-third more time, sitting four weeks instead of three,— will greatly increase the time to be given to the disposal of cases in that department. This should make it possible at least to remove the only complaint that has been made in the First Department, a complaint that some of the older members of the Bar do not appreciate. Perhaps the younger members are not used to the severe discipline that the older members have had from this very remarkable tribunal, this appellate division in the First Department. We give the Appellate Division in the First Department leave to sit in two parts, of five judges each. We make provisions for two extra judges, if it shall be necessary. We make a new provision giving the Appellate Division power to reduce sentences in criminal cases. This was recommended by district attorneys, by judges sitting at trial terms and by justices sitting in the Appellate Division. These are the changes which have been proposed by the Committee. All of them have been indorsed by all of the lawyers and all of the judges who appeared before the Committee and we recommend them to your careful consideration.

Mr. Cullinan — Mr. Chairman and gentlemen: The report of the Committee provides for the retention of the present judicial departments as they were territorially provided for heretofore. Now, it seems to me that there ought to be a little more elasticity with reference to the departments in the upper part of the State, for it provides here that a rearrangement or alteration can only occur once in each ten years. The Fourth Department of this State extends from Herkimer county to Lake Erie and from Lake Ontario down to the southern part of the State of New York, a very large territory and one in which there is a large number of growing cities and villages. I want to call attention to the fact that the last enumeration shows that these villages, beginning with Herkimer, the cities of Rome, Little Falls, Utica, Syracuse, Watertown, Oswego, Rochester, Buffalo, Jamestown and other cities in the southern tier, are growing at a rate which indicates that, if this provision remains as it is, the Fourth Department will be crowded in the discharge of its business precisely to the extent that the First Department is crowded. I also want to call your attention to the fact that after the Barge canal is opened and navigation therein conducted by the large units carrying 3,000 tons, and the Welland canal around Niagara Falls, now nearly completed, permits the great units on the upper lakes to come down into Lake

Ontario, we are going to have on the southern shore of Lake Ontario, taking in Syracuse, Sodus, Rochester, Charlotte, Pultneyville and other places, a number of little Pittsburghs, for the reason that these great units will bring down the iron ore of the west at these very points. I now understand that the Rockefeller interests are obtaining options on certain points on the southern shore of Lake Ontario where they expect to have large iron and rolling mills. In addition to that fact, these points on Lake Ontario, on the southern shore will be able to get coal from Pennsylvania at a very short haul. So that, from an economic standpoint, we may expect in the very near future to see on the southern shore of Lake Ontario at these places I have named a series of little Pittsburghs and a great growth ensue immediately after the opening of the Barge canal. Now, gentlemen, it would seem to me that under those circumstances, where this growth is very nearly absolute in comprehension, we should, instead of saying that these districts can only be altered but not increased — that provision is too rigid and I have prepared an amendment providing that once in each five years there may be an arrangement of the judicial departments of the State. The language at present is that once in every ten years the Legislature may alter the judicial departments but without increasing the number thereof. Now my amendment provides that once in every five years the Legislature may rearrange the judicial departments of the State and may increase the same. I will send my amendment up to the desk.

Mr. Wickersham — We continued in this regard the provision in the existing Constitution. It seemed to the Committee that there ought to be a permanency in the division of the State into the judicial departments and it seems to me, speaking now in response to Delegate Cullinan's suggestion that it would be unfortunate to leave it open to the Legislature every five years to enter into a readjustment of the counties of the State into the different departments. Now, Mr. Chairman, as bearing on this, let me call the attention of the Convention to the statistics regarding the judicial business of the Appellate Division of the Fourth Department. It may be that in the future there will be this large increase which the delegate apprehends, but there has not been such in the past. I have here a report from the clerk of the Appellate Division of the Fourth Department in which he gives me the number of cases disposed of by that court every year for six years past. I will read it. 1909, 591 cases decided, enumerated and non-enumerated; 1910, 598; 1911, 585; 1912, 598; 1913, 581; 1914, 600.

Mr. Cullinan — Does that include the motions?

Mr. Wickersham — Not the independent motions in the court, but appeals in enumerated and non-enumerated cases. So that the average for six years past is somewhat under 600 cases, and in the year 1914 the court decided only four more cases than it did in the year 1909. In addition to that, he says, the court disposed of 140 motions which were made upon typewritten paper during the year 1914, and substantially the same number during the preceding five years. Now, he also says, that the number of appeals from judgments and from enumerated matters in which returns were filed in this department, during the year 1914, was 515, and the number of appeals from orders and from non-enumerated matters filed during the same time was 138. So that there would not seem to be any present or any over-shadowing indication of a change in that department in the near future. Moreover, under the section under discussion, it is provided that only every ten years the Legislature may alter the judicial departments, enlarging and increasing the number thereof. So that at any time after the adoption of this Constitution the Legislature if it sees fit may alter the limits of the Fourth Department. It might next year change and throw certain counties into the Third Department, which now does less business than any of the other departments, very considerably less. The Third Department, according to the report I have from the clerk of the Appellate Division, reports that the number of appeals from judgments, etc., argued during 1914 was 295. The number of appeals on the non-enumerated calendar, 93, so that court disposed of less than 400. That is, 388 appeals in enumerated and non-enumerated matters, as against 1,500 in the First Department, 1,100 in the Second Department and five hundred and odd in the Fourth Department; so that the Legislature might very properly divide the Fourth and Third Departments, and throw certain counties into the Third and it is open to do it at any time except that it cannot do it more than once in ten years. And, Mr. Chairman, it does seem to me that there should be no invitation to the Legislature to alter these departments with any frequency. It should be in response to actual need and it should be done with a certain degree of permanence.

Mr. Cullinan — Mr. Chairman, in answer to the remarks of Chairman Wickersham, and without making any expression which may be construed as unfavorable to any other department of the State, but in view of the expression which the gentleman himself used with reference to the First Department, that the Bar members feel as if they might criticize the court for rather a limited place upon arguments in that court, I have to say that the Fourth Department sits for six months of the year and that I know of no department in the State where greater liberality is extended by the court to the members of the Bar.

Mr. Wickersham — Mr. Chairman, as between a court that has 400 cases to dispose of and one that has 1,500 cases in the year, is it to be wondered at that the former can extend greater liberality to the Bar?

Mr. Cullinan — Well, Mr. Chairman, the Bar has a right to expect that they shall be permitted a liberal amount of time to present their cases to court.

Mr. Wickersham — We appreciated the force of that criticism, Mr. Cullinan, and that is the reason we formed a plan to relieve the Appellate Division of the First Department so that it could yield to that natural demand on the part of the Bar, and yet dispose of the enormous amount of cases.

Mr. Cullinan — Well, Mr. Chairman, I appreciate for the New York Bar the courtesy which the Committee has extended. We have always enjoyed that courtesy in the Fourth Department, but we intend to do a little something for the judges, for I know they are thoroughly worked and they give a good deal of attention to their cases, and, while I do not reflect on other departments, I do think there is no other department in the State — and I have had occasion to examine them all — where there are more briefs, or where there is more attention paid and more consideration given than in the Fourth Department of the State of New York. Now we in these growing cities and villages think that perhaps we will not be able to get that rapid despatch of business which we ought to enjoy, and I think instead of waiting for ten years with no right to change these departments that we ought not to wait more than five years that these departments might be increased.

Mr. Wickersham — Mr. Chairman, I don't know that I make my point clear, Mr. Cullinan, but under this proposal it is open to the Legislature, next year if it chooses, or at any time, to remodel the department except that if it is done, then you cannot do it again for ten years.

Mr. Cullinan — But you cannot increase the number.

Mr. Wickersham — Mr. Chairman, I see no reason for it. We think, on the contrary, it would be a great waste of the people's money to create another department in the State's judicial business out of the First and Second Departments. The business does not warrant any increase in the number of departments, or the creation of a separate Appellate Division. The two Appellate Divisions in the Third and Fourth Departments, according to statistics which I have read here, are not burdened with an amount of business which would justify dividing those two departments into three.

Mr. Cullinan — Mr. Chairman, you are practically making another department in the First and Second Departments by making an increase of judges,

Mr. Wickersham — I have spoken of that, Mr. Cullinan. What I said was that there was no such volume of business divided between the First and Second Departments, as to justify dividing them into another department; and in order to avoid making a separate department, making two departments out of the First, we have devised and recommended this plan of keeping one Appellate Division and giving it power to sit in two chambers if it shall so desire, thus as far as possible minimizing the effect of a division into two departments, which in the opinion — the unanimous opinion — of the Committee was most objectionable.

Mr. Cullinan — Well, my position is that you are making all of the arrangements necessary to take care of an increase of business. Now we believe we are going to have an increase of business.

Mr. Wickersham — The statistics in our case show a constant rapid growth of business. The statistics in the Fourth Department show no increase of business in the last six years.

Mr. Cullinan — We believe we are going to have an increase of business because the State is growing and we want to provide for it in the future; not now, but in the future.

Here is my amendment.

Mr. Cobb — We have a splendid new court house in Syracuse, and we have a fine room in the court house which we call the Appellate Division room. Behind the desk there are five luxurious chairs and we show it to visitors as the Appellate Division room. It serves no other useful purpose. If I were to consult my personal inclinations I should like to see the Appellate Division there graced by five judges selected from our district.

Mr. Brackett — County.

Mr. Cobb — Yes, perhaps we could find them in the county, at least passable ones. But when I reflected that the average number of appeals heard by an Appellate Division is something like eight or nine hundred, and that adjoining our department is a department considering only three hundred and that the Legislature might easily take off a county like Herkimer or any of these counties adjoining the Third Department, and equalize the business —

Mr. Brackett — You can't divide the district; that is the trouble.

Mr. Cobb — You can change a district. You can take counties from one district and put them into another, under Section 1. It seems to me that it would really be a useless thing to organize during the next two years, at least from anything we can see, an additional department in the up-state region.

Mr. Wickersham — Mr. Chairman, may the amendment proposed by Delegate Cullinan be read

The Chairman — The Secretary will read the amendment.

The Secretary — On page 3, line 9, strike out word " ten " and insert the word " five ". On page 3, line 10, beginning with the word " alter ", strike out the words " alter the judicial departments, but without increasing the number thereof ", and insert in lieu thereof " rearrange the judicial departments by increasing the same ".

Mr. Wickersham — For the reasons I stated, Mr. Chairman, I trust the amendment will not be adopted, because I think the evil can be reached, whatever evil there is, in the way I suggested.

Mr. F. Martin — While we are on this section 2, I want to call attention to the fact that there is a clause inserted there which at one time I thought would probably be the means of making uniform sentences in all cases except homicide cases; but after giving it thought I feel that it is a very dangerous clause to insert in the Constitution. I mean the clause which provides " On appeals from judgments of conviction in criminal cases, the Appellate Division may reduce the sentence imposed by the trial court or judge. You are on Section 2 now?

Mr. Cullinan — Section 2. That is all right.

Mr. F. Martin — Now, in reference to that section, in the first place, the code expressly provides for the sentence in homicide cases. Now, if a man should be convicted of murder in the second degree and sentenced from twenty years to life under that provision the Appellate Division would be able to reduce the sentence. Furthermore, the Legislature fixes year after year sentences for certain crimes, and, for instance, take kidnapping cases. It was found necessary only a few years ago to make the sentence a very severe one. I feel that under such circumstances a clause like this should not be inserted in the Constitution; the punishment should be fixed by the Legislature, and especially in homicide cases. I think it would be a very dangerous thing to allow the Appellate Division in all homicide cases except first degree murder to reduce or change the sentence. I have found from my experience that you can rarely find two men who will agree on a sentence or what should be given for a certain crime. I have found that judges have hobbies, you might say, on certain crimes. Some think that a crime is a very serious one, while other judges feel that it is not. I have found cases where some judge would give probably ten years as a sentence for the commission of a crime, and another judge think one year would be a severe sentence. Now I realize that this provision has been inserted to try and arrange for uniform sentences, but I think it should not be placed in the Constitution where there would be no remedy in case the people of the State felt that a heavier sentence should be given for certain

crimes such as kidnapping, and I think especially in the homicide cases it would be a very dangerous thing to allow judges to change the sentence. The Appellate Division in the Fourth Department might differ from the Appellate Division in the First Department; and the same in arson cases; the same in reference to grand larceny, and cases of that kind. Instead of arranging for uniform sentences, this would make it so that the sentence throughout the State would be anything but uniform, and I think it is a very dangerous thing to place such a clause in the Constitution of this State.

Mr. Quigg — Mr. Chairman, Mr. Martin talks like a district attorney, like a man who thinks that everybody is guilty, no matter what the proof is. Now, take these various reports with which the courts are mostly occupied. Lawyers try them; they try them against me and they get a verdict. They go up to the Appellate Division, and there is not a report that is handed down any week that does not contain this, verdict, or judgment, reversed, unless the plaintiff will stipulate to accept less money than he got in his judgment, in which case the judgment is affirmed. So that they can take away the money that a plaintiff has obtained, and as a rule, fairly obtained. It is the rule that the verdicts are fair. The Appellate Division can now reduce the verdict in a case of money. Why not then in a case where a man's liberty is concerned? Why should not the Appellate Division be allowed to look into the facts of a case and say whether the judgment in that particular case is right or wrong, whether the sentence is not too long? What do you want uniform sentences for? The facts are never uniform. Why should they ask for uniform sentences unless you have got uniform facts, and they never are that way. If there is a case where the Appellate Division should be allowed to exercise its discretion in the interest of justice, it is not so much the case where money is concerned, but it certainly is the case where liberty is concerned.

Mr. Byrne — Mr. Quigg's suspicion regarding Mr. Martin, I think, is well-founded, and Mr. Martin has given us a very good reason for retaining this particular clause. He says at times one judge, who is severe, will sentence a man for five years for a particular crime, and then some other judge who is lenient will only give one year for the same crime committed under practically the same conditions. Don't you think it is very wise to have five men who shall review both of those cases and say what the punishment should be and make it more regular and perhaps more just?

Mr. F. L. Young — Mr. Chairman, within a year a little experience in my own practice furnishes, I think, all the argument necessary for the approval of this particular section. An unfortunate young fellow, only 24 years of age, was confined in Sing Sing

prison on a charge of having forged a $12 check, on a sentence of not less than five nor more than ten years, and he actually served the five years, and the reason why he served the five years was because the courts were powerless to reduce the sentence. Unfortunately for the young man he was too active in the prison, I don't mean in the wrong way, but active in a way so he could not get the favor of the parole board, and he had to serve more than five years. There is a sentence that can be found in the records of Queens County, where a young man never previously convicted of crime, was sentenced for not less than five nor more than ten years for forging a $12 check, and he was only 24 years of age.

Mr. Winslow — I think I can say from my own experience after serving six years as district attorney of Westchester county that this provision is a most excellent one. I remember some years ago at the annual session of the district attorneys' association of this State, of which association at the time I was an officer, that this very matter was discussed and a majority of the prosecuting officers then in office in the State were in favor of this very provision which has now been proposed by the Judiciary Committee. I think that the argument made by the delegate from the Bronx that so many judges differ so widely as to sentences, is the very argument in favor of giving to the Appellate Court the right to review on the facts and to determine whether or not there should be more equality in sentences, meted out for the same crime. I am heartily in favor of this provision, and I trust it will prevail.

Mr. F. Martin — How about sentences to be reduced in homicide cases?

Mr. Winslow — My answer is that as concerns your citation of murder, second degree, that the penalty is fixed by statute from twenty years to life, and I assume that the language used in the amendment means that the Appellate Court can intervene only within the provisions of the statute and within the purview thereof.

Mr. Wickersham — May I simply and briefly state that this provision had the approval of District Attorney Perkins of New York, the presiding justices of both the First and Second Departments, and a number of other lawyers and judges who appeared before us, and the judges stated that, as a matter of fact, the courts were often driven to reversing the conviction simply because they felt the sentence was an outrage upon justice; and that if they had the power to review a sentence and to modify it by reduction within the limits imposed by law they would not be constrained in so many cases to reverse the judgment and send it back for a new trial.

Mr. Austin — Before we pass from the consideration of this

amendment I would like to suggest two very slight changes which seem to me to make the language appearing upon page 4 clearer and better. I call attention to the provision in line 13 of page 4 which starts with the words: "Ten justices in all shall be designated to sit in the Appellate Division", and then provides that two additional judges may be designated under certain circumstances.

Mr. Wickersham — Your motion is to strike out "in all"?

Mr. Austin — Yes.

Mr. Wickersham — No objection.

Mr. Austin — Also this suggestion, Mr. Wickersham: In line 16 the word "he", in view of the wording in other sections of this article, should be changed to read "the governor", because it is not clear there. It says: "the presiding justice thereof at any time shall certify to the governor that the interests of justice so require and he shall designate". I assume you meant to have it read "the governor".

Mr. Wickersham — I think there that the last substantive before the pronoun is "the governor"; I cannot see the connection.

Mr. Austin — I call your attention, General, to line 6, on this same page, which says that the justices shall be designated by the Governor and on line 10 you use the words "the governor shall make new designations", having cut out the word "he" in the old language. It seems to me that, for uniformity and for absolute clarity, the words "the governor" should take the place of the word "he".

Mr. Wickersham — I have no objection. It does not seem to me to be necessary, but I have no objection.

Mr. Austin — I therefore offer that amendment.

Mr. Wickersham — That is on line 16?

Mr. Austin — Line 16, in the place of the word "he" insert "the Governor".

Mr. Shipman — I assume that the chief purpose of this proposed amendment is to shorten the law's delays, and I have a brief amendment to section 2, which I shall propose. In the courts throughout the country the judges sit during the summer time. In the city of New York, particularly, where there is much pressure of business, we have two terms of court which sit continually during the vacation months, that is, during July, August and September — the motion part and the ex parte division — which deal with the current things that come up in the conduct of litigation. Now there is no reason, if the Appellate Division in the First Department which comprises the greater part of the city of New York shall be increased to ten or twelve judges, why such a provision should not be made to apply to them. I will give you as

an example something that took place in my own practice. I obtained a decision in the Appellate Division in July, in which one justice dissented. Before I could undertake to enter judgment upon that, I was met by an order to show cause issued by the presiding justice of that department which practically stayed me until October 8th, before I could move hand or foot. It consisted of a motion to allow an appeal to the Court of Appeals containing practically a stay until that motion was heard. It was a question of procedure. It was not a question of law; it was not on the merits. I do not ask that the courts should sit during the intervening time, but it certainly could meet for a short session once in each of those months at which questions of procedure like that could be determined, so that a litigant may know "where he is at," as one gentleman expressed it. Therefore I offer the following amendment to line 22 of page 3, and I ask to have it read for the information of the Committee of the Whole.

The Secretary — By Mr. Shipman. Section 2, in line 22, between the words "each part" and "In each Appellate Division", insert, "One of these parts shall hold a session for the disposal of questions of procedure during the months of July, August and September of each year."

Mr. Wickersham — Mr. Chairman, I hope that will not prevail. The Appellate Division does hold a term for the consideration of motions usually on the first Monday morning of each month. If the gentleman's order to show cause was returnable in October, I am quite sure that by an application to the presiding justice of the court it could be made returnable for the first Monday in August. There is no such amount of business during the summer as to require the continuance of the Court in session during those months. It would be a great hardship on the bar, it would be a great hardship on the judges, and I think we ought not to attempt to require it in the Constitution. If, as a matter of fact; it should be necessary, the Legislature can, by law, deal with the subject.

Mr. Shipman — Mr. Chairman, I think our judges should be at our disposal during the entire year, and when we have the Appellate Division increased to twelve judges there could at least be five of them there at times during the summer. They don't all leave town. They are at our disposal. It is practically a denial of justice that a man should be stayed in litigation for three months, and I think that the courts should hold a brief session, if only half a day or one day, once a month in July and in August and in September, to decide those numerous questions of mere procedure that come up and not make them returnable, as they are, on the first Friday in October. No session for the disposal of

motions of any kind has been held in the Appellate Division during July or August of this year.

Mr. Marshall — I merely wish to call attention to the fact that the amendment which has been proposed would be absolutely futile. The suggestion is that one of the two parts of the Appellate Division shall hold a session during certain months of the year. The provision which precedes that Proposed Amendment merely provides that the Appellate Division has the power to sit in two parts but it is not required to sit in two parts. That is to be optional and it would be a most unfortunate thing to insert words in that connection which apparently would make it obligatory upon the court to sit in two parts, especially at a time when ordinarily the profession is not prepared to carry on its regular business. Now, moreover, this entire subject is one which can be taken care of by the rules of court. The court has it in its power, if it is deemed necessary, to hold a term during the summer months; and if there should be a demand for it, undoubtedly the court would heed such a demand. Up to the present time I have never heard any suggestion made by any lawyer that there is any necessity for holding a term of court during that part of the year. I do know that the court has convened on a number of occasions when an important question which required immediate consideration arose. I know that, on a day's notice, I succeeded in getting the court to convene in 1914 for the purpose of determining a question of great State interest. Every lawyer knows that, in connection with election cases, the Appellate Division in the First Department has frequently convened and has promptly disposed of those cases in order to effectuate the Election Law. I should therefore consider it a most unfortunate thing if this provision were inserted.

Mr. D. Nicoll — I want to say that in the city of New York there are a few members of the Bar that make a specialty of practicing in the month of August, but the great majority of the profession flee the city and the courts at that period of the year. I entirely sympathize with the vigorously expressed sentiments of the gentleman from New York, Mr. Shipman, about the necessity of having courts and judges always on tap, but it seems to me that we do not want to constitutionalize everything in this Convention. I see no reason for putting court calendars in our Constitution. Sad as it is, I think we must leave something to our judges and submit to them the question as to whether or not the exigencies of public business demand that they hold court in the "dog days."

Mr. Austin — Mr. Wickersham, may I ask you about one other provision of this section which seems to me to be in contradiction of another section, although possibly intended so? Page 4, the

new matter beginning at line 19, provides that during the absence or inability to act of a judge serving in that appellate division, the presiding judge shall assign a supreme court judge to take his place. Now it is provided in section 9 that when a judge of the appellate division who is assigned temporarily to the Court of Appeals returns — when his designation in the Court of Appeals expires he shall return to the appellate division from which he came. That would be an absence from the appellate division. Now on page 15, lines 21 and 22, it is provided that the appellate division may designate other justices of the supreme court to sit in the appellate division during the absence of regularly assigned justices of such division. In other words, in the case of one kind of absence, it appears to me that the designation must be made by the whole court and in the other case by the presiding judge. I assume you want that uniform, or do you not?

Mr. Wickersham — No, that is precisely as intended. The Committee thought that in the case of a short designation, not exceeding four months, and which would generally be for a period of thirty days, the presiding justice should make the designation. For instance, Judge Clark may be ill, if you please, and he has to go away for three or four weeks. The presiding justice may telephone around and find a judge whom he can get for thirty days and bring him up there. If it is to be for a period of a year, that requires more serious consideration and the court should make the designation.

Mr. Austin — I have no objection, but it struck me that it might be made uniform.

The Chairman — If there is no further discussion, the question will be upon the amendments offered. The first amendment is that offered by Mr. Cullinan. The Secretary will read the amendment again for the information of the Committee.

The Secretary — On page 3, line 9, strike out the word "ten" and insert in the place thereof the word "five". On page 3, line 10, beginning with the word "alter", strike out the words "alter the judicial departments, but without increasing the number thereof", and insert in lieu thereof the following: "rearrange the judicial departments by increasing the same".

The Chairman — The question is upon the adoption of the amendment. Those in favor will signify by saying Aye, opposed, No. The amendment is lost. Next are the amendments offered by Mr. Austin of Greene. I understand there is no objection by the Committee to the amendments.

Mr. Griffin — It occurred to me, while the suggestion was being made by Mr. Austin and accepted so readily by Mr. Wickersham, that line 16 on page 4 would admit of a further transposition of

the language so as to avoid tautology. Reading from line 13 it says "Ten justices" ("in all" is stricken out.) "shall be designated to sit in the appellate division in the first department but in case the presiding justice thereof at any time shall certify to the governor that the interests of justice so require the governor shall designate" —the words "the governor" being introduced instead of "he"—I think we can avoid the repetition of the words "the governor" by omitting the words "to the governor" in line 15 and have the sentence then read in this way: "but in case the presiding justice thereof at any time shall certify that the interests of justice so require, the governor shall designate two additional justices to sit therein".

Mr. Wickersham—Mr. Chairman, while that would be shorter, I think it should be clearly provided that the justice shall certify to the governor that fact. That is merely in conformity with the other provisions in the Constitution. While it is a little longer, I think it is clearer.

Mr. Griffin — I think the inference would be correctly drawn if a certification is made, especially where it is clearly indicated for what purpose the certification is made. Upon the certification of the presiding justice of the Appellate Division, the Governor shall do a certain thing. I think it is clearly implied that it must be made to the Governor. It doesn't make any difference whether you use the specific words "to the governor" or not; in fact, it might be a detriment to use those words. Suppose the Lieutenant-Governor were acting in his place? The material point is the certification by the presiding justice of the Appellate Division that certain conditions exist.

The Chairman — Does Mr. Griffin offer an amendment, or is that in the form of a suggestion?

Mr. Griffin — I do not want to go to the trouble of making an amendment. I think that the wisdom of the change is apparent and I hope that General Wickersham will see the propriety of consenting to the change in verbiage. I do not see that there is any excuse for tautology in a sentence of only ten or fifteen words.

The Chairman — The question is upon the adoption of the amendments offered by Mr. Austin. The Secretary will read the amendments.

The Secretary — Page 4, line 13, strike out the words "in all". Page 4, line 16, strike out the word "he" and insert in place thereof the following: "the governor".

The Chairman — The question is upon the adoption of the amendments. Those in favor will signify by saying Aye. Opposed, No. The amendments are adopted.

Mr. Ostrander — It may be out of order at this time, this may not be the order of business, but there was an amendment which I desire to offer to this article, section 1, and though it is not the proper time I would like to offer it out of order.

Mr. Wickersham — Section 2?

Mr. Ostrander — No, it is Section 1.

Mr. Wickersham — We have passed Section 1, but if you will hand it to the Committee afterwards, we will take it up.

The Chairman — The question is upon the amendment offered by Mr. Shipman.

The Secretary will read the amendment.

The Secretary — By Mr. Shipman, page 3, line 22, between the words "each part" and the words "in each Appellate Division", insert the following: "One of these parts shall hold a session for the disposal of questions of procedure during the months of July, August and September of each year".

The Chairman — The question is upon the adoption of the amendment. Those in favor signify by saying Aye. Those opposed, No. The amendment is lost. The question now is upon the adoption of section 2 as amended. Those in favor of its adoption will signify by saying Aye. Those opposed, No. The section is adopted. Section 3. The Secretary will read.

The Secretary — Section 3. There shall be an appellate division of the supreme court in the first and in the second department consisting of not less than three nor more than five justices of the supreme court to be designated annually by the appellate division of the supreme court in such departments respectively. Such appellate divisions respectively may designate justices to sit in the appellate term during the temporary disability of any of the justices previously designated. Three shall constitute a quorum, and the concurrence of a majority shall be necessary to a decision. All appeals from judgments and orders in civil cases made by county courts within said departments, and all appeals from judgments and orders made by the city court of the city of New York, the municipal court of the city of New York, the court of special sessions of the city of New York, as such courts now exist, or as hereafter consolidated or reorganized pursuant to this article, and by all other inferior or local courts, except courts held by justices of the peace, within said departments, shall be heard at the appellate term. The Legislature may enlarge or restrict the jurisdiction of the appellate term. Appeals to the appellate division from judgments or orders of the appellate term may be allowed only by order of the proper appellate division.

Mr. Vanderlyn — The Clerk in reading this section read "appellate division," and in our files, which we have upon our

desks, it is "appellate term", and is it a question of correct reading or a mistake in the reading?

Mr. Whipple — No, it is a mistake in the reading.

Mr. Vanderlyn — The Clerk in reading read "There shall be an appellate division", and it reads here "There shall be an appellate term", and some of the other gentlemen here suggested that it was either a misreading or perhaps I may have misunderstood him.

The Chairman — There must have been a misreading.

Mr. Buxbaum — I would like to be enlightened upon this clause if the General will please give me the information. The section reads "There shall be an appellate term of the supreme court in the first and in the second department consisting of not less than three nor more than five justices." That is in lines 10, 11 and 12. On line 17, you say "Three shall constitute a quorum, and the concurrence of a majority shall be necessary to a decision." Does that refer to the number of judges of the Appellate Term, or to the number of judges presiding to hear an appeal?

Mr. Wickersham — It reads a majority of those presiding to hear an appeal. The provision is flexible. The Appellate Division may appoint three or five. They may appoint four, and not knowing what they would do, the Committee left it so that it provides that a concurrence of a majority should be necessary; that three at least should constitute a quorum and the concurrence of a majority shall be necessary to a decision.

Mr. Buxbaum — The Appelate Division may appoint three or five to constitute the Appellate Term?

Mr. Wickersham — Yes.

Mr. Buxbaum — But not to sit in any one case.

Mr. Wickersham — Not to sit in any one case.

Mr. Buxbaum —And you say a majority of the five would be a quorum?

Mr. Wickersham — No, that is not what was intended.

Mr. Buxbaum — I direct your attention to that, General.

Mr. Wickersham — The point is this: "There shall be an appellate term of the supreme court in the first and in the second department consisting of not less than three nor more than five justices of the supreme court to be designated annually." Then, "Three shall constitute a quorum" no matter whether there are five or three. If there are three, it means it would be three; if five, at least three, and if four, at least three of them must be present, and a concurrence of the majority of the court shall be necessary to a decision.

Mr. Buxbaum — But, if three sit there, the point may be raised that all three should concur in order that there may be a majority of the Appellate Term.

Mr. Wickersham — You mean a majority of those sitting?

Mr. Buxbaum — Yes, of the justices sitting.

Mr. Wickersham — I have no objection to that.

The Chairman — Does the gentleman from Kings offer an amendment?

Mr. Wickersham — I think it should be made to conform with the other provision, or similar provision relating to the Appellate Division which reads: "Four shall constitute a quorum" — the language in the previous section, page 3, regarding the Appellate Division is "four shall constitute a quorum", and then "the concurrence of three shall be necessary to a decision." Now, if we say, "three shall constitute a quorum and the concurrence of a majority of those sitting in any case"—

Mr. Marshall — Why not say, by the concurrence of two?

Mr. Wickersham — No, a majority of those sitting, I think, would be better, and if the delegate moves to amend, or to include those words, I will accept the amendment.

Mr. Buxbaum — I move to amend, and I will send the amendment to the desk.

Mr. Bayes — Mr. Chairman, I would like to ask Mr. Wickersham in reference to Section 3, whether it is the intention of the Committee to make the Appellate Term a court of last resort in respect to those appeals mentioned, beginning at line 18, except, of course, where an appeal may be allowed to the Appellate Division.

Mr. Wickersham — It is.

Mr. Bayes — Mr. Chairman, if that is so, while I don't care to offer an amendment, I wish to say it strikes me as being possibly fraught with danger, and with difficulty. It oftentimes happens that novel and important questions of law arise in these lower courts, and if we are to retain the Court of Appeals with a view to having it determine the law for the State, it seems to me some provision should be made, whereby questions arising in these courts, questions of importance, perhaps of State-wide importance, should reach the Court of Appeals.

Mr. Wickersham — If any such case as the delegate suggests is presented, of course the Appellate Division on application would allow an appeal to it, and if the Appellate Division itself took the jurisdiction of the appeal and decided the case, and it fell within any of the classes of decisions over which the Court of Appeals was given jurisdiction, an appeal could go from those decisions to the Court of Appeals. If it did not fall within any of those categories, still the Court of Appeals would have jurisdiction to allow an appeal if the reasons were presented to it which moved its judgment. In general, Mr. Chairman, our intention was that

in this class of cases, the Appellate Term should stand as the last court of general review as one of the means of relieving the Appellate Division, one of the means of disposing of this large body of cases, most of which are comparatively small, and of course, involving difficult and interesting questions and by dignifying this court and making it something more than an organization of that aggregation, we have sought to create a court of dignity, and a court of responsibility, and a court which could command the confidence of the bar and the people. While I am on my feet, I will make one suggestion. In framing this measure, the Committee overlooked one matter which makes it necessary to offer an amendment, and that is, we provided that the Appellate Division should have jurisdiction to hear all appeals from various courts, and in various matters enumerated, and we excepted from its jurisdiction courts held by justices of the peace within the department. We desire to except, although the language does not express it, appeals from city magistrates' courts, which now go to the Court of General Sessions; and under the new and inferior courts act, city magistrates hold special sessions courts in certain classes of minor offenses. And, therefore, in order to eliminate those questions from the Appellate Division and to leave them where they now are, and where they belong, and where they are disposed of rapidly and informally by the Court of General Sessions, I move to amend by inserting on line 25 of page 6, after the word "peace" the words "city magistrates courts and courts of special sessions held by one city magistrate only," so that appeals from those tribunals will continue to go to the Court of General Sessions.

The Chairman — Will you send up the amendment?

Mr. Wickersham — Yes, I will send it up, Mr. Chairman, and one minor correction should also be made in line 24 of page 6, the word "or" between "inferior" and "local" should be stricken out, and on page 7, line 3, the words "order of" should be stricken out as superfluous, leaving it read that the appeals and so on "may be allowed by the proper appellate division." I will send up the amendment.

Mr. Burkan — Mr. Chairman, may I ask the distinguished chairman of the Committee on Judiciary to give me some idea of the extent and scope of the powers vested in the Legislature by the last line in Section 3, or next to the last line, where it provides in respect to enlarging and restricting the jurisdiction of the appellate term. "The Legislature may enlarge or restrict the jurisdiction of the appellate term." What power would the Legislature have under that?

Mr. Wickersham — The Legislature might, if it saw fit, hereafter give the Appellate Term jurisdiction of appeals from the

Court of General Sessions. It might give it, if it should be so disposed, jurisdiction of appeals in matters of procedure. The Committee had intended, Mr. Chairman, and in some of their drafts they provided, that all appeals from interlocutory orders affecting matters of procedure only should go to the Appellate Term and not the Appellate Division; but it finally struck that out, for two reasons: First, because of the great volume of business which the Appellate Term is obliged to dispose of under these provisions, and we felt it would be adding a burden too great if we increased its jurisdiction at the present time. And then, and perhaps more forcibly, we were constrained by the thought that if we should adopt the new procedure which is indicated in our report, a great many of these practice motions that now vex the courts and especially the Appellate Division, would be removed, and that it would not be necessary to make special provision for that. For those two reasons we refrained from adding that jurisdiction to the Appellate Term; but, at the same time, in order to have this system flexible and adapted to meet the changed and changing needs of the next twenty years we left it to the Legislature to add to the jurisdiction of the Appellate Term, if it should be so advised in the future.

Mr. Burkan — Would the Legislature have the right to confer upon judges of the Appellate Term the right to allow an appeal to the Appellate Division from a determination of the Appellate Term?

Mr. Wickersham — No, it would not.

Mr. Burkan — While we are on this section: There is omitted from Section 3 the right on the part of the Appellate Term to reduce or modify the sentence in a criminal case. Now, for uniformity's sake, I think the same provision should be inserted in this section. The Appellate Division is given the right in every appeal taken from the Court of General Sessions to reduce or modify the sentence. In respect of the Court of Special Sessions the jurisdiction of the court is limited to the cases of misdemeanors and other cases, where the punishment involves one year in the penitentiary and a fine not exceeding a thousand dollars — now to an offender sentenced to jail for one year and a fine of a thousand dollars, and in default of payment of the fine to serve one day for each dollar of fine unpaid, it is a pretty serious thing. Liberty is as dear to him as to the man who happens to commit an offense triable in the Court of General Sessions, and I think the same provision should be inserted in this section, that the Appellate Term should have the same power, if you are going to send these cases to the Appellate Term, if the Appellate Court has the right to examine the law and the facts, it should have plenary power in

the case, it should have the right to reduce or modify the sentence. We find that in the magistrates' courts, the magistrate will, after a hearing, sentence a man to six months on the Island, the limit of punishment for a statutory offense, and frequently the Appellate Courts will reverse that conviction simply because they have not the power to reduce sentence to a month or ten days in the city prison.

Now, I appreciate that it might be urged here that it will result in opening the floodgates of appeal from these cases. Put in some restrictions if you like. Give the court some power in a worthy case, in a deserving case, where, because of public opinion, where some man commits a libel or commits a minor offense, and the law metes out the maximum penalty. The Appellate Term should have some supervision. I am not willing to open the floodgates. Put in a restriction if you like. Let them get leave of the court to appeal in that particular case, or put in any restriction or limitation that is reasonable; but the court should have some power in a worthy case, a deserving case, to reduce or modify the sentence. The reasons urged this morning conferring jurisdiction upon the Appellate Divisions in criminal cases appeal to me. They are persuasive and cogent. Now, when this Constitution comes out, it will be pounced upon and criticised by agitators. They are going to say it is the same old story; they are overlooking the poor man; no such power is conferred upon the poor man's court as is conferred upon the more dignified tribunals. It is the protection of the rich and discrimination against the poor, the meek and lowly. Now, I have given some consideration to the arguments. It may not be proper to urge it here, but it is a condition, and those of us who live in New York know the arguments being urged daily in certain journals in regard to the proceedings here, its personnel, and the criticism made of the members of this Convention. It seems to me that we ought to quiet this discontent. Reasonable restrictions could be placed in the Constitution, and at the same time give the courts that power which I think they ought to have.

Mr. Buxbaum — May I point out to General Wickersham some improvements that could be made in the language of Section 3. You say, " There shall be an appellate term of the Supreme Court in the first and in the second department consisting of not less than three nor more than five justices of the Supreme Court to be designated annually by the appellate division of the Supreme Court in such departments respectively. Such appellate divisions respectively may designate justices to sit in the appellate term during the temporary disability of any of the justices previously designated," and so on. That, I suppose, is intended to mean that the justices of each department may designate the justices of the appellate term in their respective departments?

Mr. Wickersham — Certainly.

Mr. Buxbaum — Does it say so?

Mr. Wickersham — It seems to me it does.

Mr. Buxbaum — Now, you follow that, on page 7: "Appeals to the appellate division from judgments or orders of the appellate term may be allowed only by order of the proper appellate division."

Mr. Wickersham — Very well. We followed exactly what, Mr. Chairman, we followed the formulation in respect to the appellate division. I don't think there can be any doubt about that, Mr. Chairman. If the delegate will look it over, I think he should see it is clear.

Mr. Buxbaum — It does not say, General, that appellate divisions may designate justices to sit in the appellate term in their respective departments.

Mr. Wickersham — What it says is, "There shall be an appellate term of the Supreme Court in the first and second departments consisting of not less than three nor more than five justices of the Supreme Court to be designated annually by the appellate division of the Supreme Court in such departments respectively." So far, I take it, you have no question?

Mr. Buxbaum — No.

Mr. Wickersham — "Such appellate divisions respectively may designate justices to sit in the appellate term during the temporary disability of any of the justices previously designated." Can there be any question as to what that means? Then I don't see quite where the delegate's trouble arises.

Mr. Buxbaum — I am simply pointing out that the language is at least not scientific.

Mr. Wickersham — Well, Mr. Chairman, we — of course I suppose any two men may differ about language, but if it is reasonably clear, as I think it is, it is a little difficult to recast it. I want to say a word about this jurisdiction suggested.

Mr. Burkan — May I offer an amendment, Mr. Chairman, to carry out the suggestions I have made?

The Chairman — The Secretary will read Mr. Burkan's amendment.

The Secretary — By Mr. Burkan: Page 6, line 26, after the word "term", insert "On appeal from judgments of conviction in criminal cases, the appellate term may reduce the sentence which is imposed by the trial court or judge."

Mr. Donnelly — I feel that the Chairman and members of the Judiciary Committee who have thought out this judiciary article are to be highly commended on the entire article. But I feel that this limitation which article three places upon the right of appeal

is something we ought to consider seriously here. In the article which gives jurisdiction to the Court of Appeals, we find that they have the absolute right to review every judgment or order made. But it is to be noted that in certain actions or special proceedings the Appellate Division may make new findings of fact, under the provisions of Section 1317 of the Code of Civil Procedure. Now, under this article here which gives a right of appeal to the Appellate Term from judgments or orders of the County Court and the City Court, we have a peculiar situation. The County Court has some equity jurisdiction and the City Court has some equity jurisdiction. If we assume a case in which a contract for real estate is made where one hundred dollars has been paid down as earnest money and the equity over and above the lien is another hundred dollars an action may be begun, if there is a dispute about the title, in the Supreme Court by the vendee to foreclose a vendee's lien for the recovery of his one hundred dollars, and we may have likewise a counterclaim in which there is sought specific performance by the vendor, and on appeal from the decision new findings of fact may be made in this litigation involving two hundred dollars or even less. If new findings are made then as a matter of right appeal may be taken to the Court of Appeals under the subsequent sections of this proposed article and the facts there reviewed. Now, we are increasing, under this article, the jurisdiction of the City Court to $5,000 and we are likewise increasing the jurisdiction of the County Court. These two courts, as I understand the law, now have jurisdiction to determine an action to foreclose a mechanic's lien to the same extent as the Supreme Court and to settle the rights of the various subcontractors who may also file liens and who may enter that controversy and to settle and determine all the rights of the parties. Upon appeal, as this section reads, in such an action to foreclose a mechanic's lien brought in the City or County Court there would be no right of appeal from the Appellate Term to the Appellate Division even though under the provisions of section 1317 of the Code new findings of fact and of law were made. Leave would have to be obtained. Now it would seem to me as a matter of uniformity, in a controversy of $5,000 under this increased jurisdiction, there should be a right of appeal to this Appellate Division as a matter of strict right. I quite agree with General Wickersham that we should not burden the Appellate Division by a number of appeals, but it would occur to me that in a controversy such as I have indicated, and many other instances, that I could point out, there should be a right of appeal to the Appellate Division, as a strict right —

Mr. Wickersham — Mr. Chairman, as I understand the present

provision of the statute the Appellate Term would have no such power. The language of the section of the Code is this: "The appellate division of the supreme court shall, on appeal from a judgment entered on the decision of the court on such trial review questions of fact or of law and may either modify or affirm or order a new trial as the facts warrant"; and then to section 1317. You may be right, Mr. Donnelly. Mr. Chairman, the section to which my attention was first called was not the section I had in mind.

Mr. Donnelly — I think the Chairman of the Judiciary will find over and above what I have said with reference to the extension of the provisions of section 1317 of the Code that under the new Practice Act affecting the Municipal Court of the city of New York, whereby jurisdiction of the Municipal Court has been increased to $1,000, there is an omnibus provision in that act which attempts to extend to the Municipal Court all the provisions of the Code of Civil Procedure properly applicable to that court. It would seem to me that if that statute were held to be comprehensive enough upon construction by the courts to include section 1317 of the Code then upon appeal to the Appellate Term, it may very well be that the Appellate Term (and the higher courts might agree) would have the right to make new findings of fact even upon appeal from the Municipal Court. Now, I do not think we are going to overburden the Appellate Division. These provisions, indeed, seek to give that court the arbitrary right to say to a litigant he may go no further, though if opportunity were afforded it might be subsequently overruled by the Court of Appeals upon a permitted review. I think, further, that where, as we now have, under the modern advance of statutory regulation affecting the rights and liberties of individuals, many statutes passed whose constitutionality is doubted there should be a right of appeal from convictions in cases of misdemeanor. Where in the Court of Special Sessions a man is found guilty of a misdemeanor under an important statute regulating such rights, where the constitutionality of that statute is involved either as offending against the provisions of the State or Federal Constitution I feel that the provision which is incorporated elsewhere in this judiciary article, giving the right of appeal absolutely to the Court of Appeals in such cases, should be imitated by a similar provision here giving, after appeal to the Appellate Term from the decision of the Special Sessions or other criminal court from which appeal is taken to the Appellate Term, an appeal to the Appellate Division as a matter of right wherever the constitutionality of a statute is involved. It does not seem to me where such a strict right is given that you are going to overburden the Appellate Division. The number of cases in which those questions

will arise is small, but where it does arise and the constitutionality of a broad statute is involved, such as the Labor Law, or other similar laws affecting for example the tenement houses of the city of New York, or other broad rights and numbers of people, it would seem to me, I repeat, that where the constitutionality of the statute is involved, the right of appeal should be given as a matter of strict right, and it would be uniform and in consonance with the provisions which will subsequently be read in this judiciary article, giving the right of appeal to the Court of Appeals. In accordance with this thought of mine I offer the following amendment.

The Secretary — By Mr. Donnelly: Strike out, line 3, page 7, all after the word "be", and strike out all of line 4, page 7, and insert in line 3, page 7, after the word "be", the following: "taken as of right to the appellate division in the following cases: (1) Where the appellate term on reversing or modifying a judgment makes new findings of fact and renders judgment thereon; (2) from a judgment or order entered upon a decision of the appellate term which finally determines an action or special proceeding where is directly involved the construction of the constitution of the State or of the United States. In all other cases appeals may be allowed only by order of the proper appellate division."

Mr. Wickersham — Mr. Chairman, with respect to Mr. Burkan's proposed amendment, that is, giving to the appellate term the same jurisdiction conferred upon the appellate division to review sentence in criminal cases, it was the opinion of the Committee that, in the first place, there was no such evil with respect to sentences in petty cases such as are involved in the matters over which the appellate term has jurisdiction, as there has been in the sentences for the more serious class of cases, affecting, as a rule, not the wealthier members of the community, but a large body of the plain, ordinary, every-day citizens. There is no division as between the rich and the poor. It was a division between that class of defenders with respect to whom the law has given a wide range of penalty and with a high maximum term of imprisonment. The only complaint that came to your committee had reference to that class of offenses; therefore, we have not had our attention called to any evil in the sentences imposed on petty offenders for misdemeanors within the jurisdiction of the court in which appeals are to go to the appellate term. In the next place, we feared that the appellate term would be utterly swamped if appeal could be taken to review sentence from every one of these convictions for misdemeanor. Mr. Chairman, the appellate term to-day is disposing of a volume of business which is so large

that we feel it cannot be very greatly increased and that even with two additional judges that court will be worked to the limit.

Mr. F. Martin — Will not the fact that people appeal from criminal cases to reduce their sentence put a lot more work on the appellate division?

Mr. Wickersham — Mr. Chairman, we have for that purpose provided for an increase of judges, and sitting in two courts if the appellate court shall so advise. The appellate term last year heard and decided ninety-eight appeals from orders of the city court, 282 appeals from judgments of the city court, 1,088 appeals from judgments of the municipal court, or a total of 1,388 cases — of 2,150 cases, and besides original motions in the court. Now, we feel, the committee, after careful consideration of this subject, deemed it wholly inexpedient to authorize appeals to review sentence in all the great volume of cases of misdemeanor that pass through the court of special sessions and the magistrates' courts.

Mr. Griffin — As I understand the amendment of General Wickersham, he proposes to eliminate the right of appeal from the magistrate's court and special sessions.

Mr. Wickersham — Well, they go now to general sessions. From the county courts they go to the appellate term.

Mr. Griffin — You propose to eliminate that criminal jurisdiction of the appellate term?

Mr. Wickersham — I am speaking of the appeal to review sentence. We eliminated it from the draft of the bill. It was not intended by the framers of the bill, and we have now clearly eliminated that from it.

Mr. Chairman, with respect to the provision suggested by Mr. Donnelly, let me call the attention of the Committee to the fact that to-day no appeal can be taken from the appellate term to the Appellate Division except with the leave of either, first, the appellate term, or, second, the Appellate Division. There is no appeal as of right. In our proposed amendment, one amendment, the allowance of appeals to the Appellate Division, following the principle which we have pursued respecting the Appellate Division in its relation to the Court of Appeals, of relieving the court which decides a case, from the alternative of either refusing to allow some one to review its own decision or of yielding when it should not yield to the persuasion that comes when a judge is appealed to to allow an appeal and feels that the fallibility of the human intellect should perhaps cause him to allow a review of his own act, even when he is most certain that he is right — therefore, I do not think the suggestion of Mr. Donnelly, although it is very persuasive, I confess, should be allowed. There is this to be considered: These cases which we are talking about come up from

either the City Court or the Municipal Court or the County Court. There has been a trial, there has been a decision, and they then come on appeal to the appellate term and there are fully heard, and there is a decision there and then there is opportunity to the unsuccessful litigant to present a petition to the Appellate Division to show what reason, if any, there is for the allowing him to go further and have another review. I can hardly feel that in any meritorious case where there is any real substantial question involved, the Appellate Division would fail to grant that request.

Mr. Coles — Mr. Chairman, I cannot but feel that it is the small offender who needs more protection than the large offender, and if a principle is good for application in our criminal courts in the larger cases, it ought to be good for the low and the lowly as well as for the high and great crimes and felonies. I feel that more offenses are committed against justice in sentences imposed for the lesser grades of crime than for the higher grades of crime, and it is because these criminals come next the people, and the people come near the courts, much nearer than in the higher cases, which are trying felonies or crimes of higher degree, and it is because of the low standing and the lack of persuasion and lack of influence that the small criminal has, that injustice has often been done in imposing sentence. We don't hear of them, because they cannot get the ear of the public and the influence of the press in their behalf. Therefore, for that reason, I feel that the principle applied to the higher grades of crime should be prescribed for all degrees of crime, from the highest to the lowest. Therefore, I feel that Mr. Burkan's amendment should prevail.

Mr. F. Martin — I believe, from my experience in the criminal law, that that principle if good with reference to felonies should prevail in the lower courts and is much desired at the present time. The magistrates' courts can sentence in such a manner as to send to the Bedford Reformatory or several other institutions an offender for three years, and I believe that the power to review such sentences is needed more in the lower courts where inexperienced judges may sentence a person, than it is in the higher courts, and I feel that it should be uniform in all courts: if we have that principle in the law at all, so that when a magistrate sentences a person, as he can today, the sentence may be reduced on an appeal where an appeal is allowed.

Mr. Burkan — Mr. Chairman, I would like to offer the following amendment.

The Secretary — By Mr. Burkan: Page 7, line 4, after the word "division" add a new section, to read as follows: § 4. Appeals may be taken as of right from any appellate term to

the proper appellate division. (a) Where one or more of the justices who heard the case dissents from the decision of the court. (b) From a judgment or order entered upon the decision of any appellate term of the supreme court which finally determines an action or special proceeding commenced in the city court of the city of New York where is directly involved the construction of the constitution of the State or of the United States, the statutes of the State, or any charter of the city of New York, but the jurisdiction of the appellate division in such cases shall be limited to the review of questions of law. (c) From an order granting a new trial in an action commenced in the city court of the city of New York where the appellant stipulates that upon affirmance judgment absolute shall be rendered against him. (d) From an order or judgment of the appellate term reversing or modifying a judgment of the trial court in an action commenced in the city court of the city of New York.

Mr. Burkan — Mr. Chairman, I propose this amendment because under this constitutional amendment proposed by the Committee on the Judiciary the jurisdiction of the city court of the city of New York is extended to $5,000. At the present time the jurisdiction of this court is limited to $2,000. The Appellate Term is a court of last resort except that under No. 1344, subdivision 2 of the Code, provision is made for appeal by order of the Appellate Term, or Appellate Division, and the Appellate Division may review the facts as well as the law in each case. Now, it is very well to say that in a proper case the Appellate Division would grant leave to go to that court, but those of us who have had experience in the trials of causes in the City Court and the Municipal Court, and have had cases where the Appellate Term was divided in its decision, know that in but few cases was such leave granted. Now, I place no blame upon the judges of the Appellate Division of the Appellate Term but they are simply swamped with applicants praying leave to have further appeal. Every defeated litigant deems it his duty to place his application with the Appellate Term for leave to go to the Appellate Division and I say that in ninety per cent of the cases the applications are denied. The same applies to the Appellate Division. It seems to me that when you are going to increase the jurisdiction of the City Court to $5,000, you are going to take away from the Supreme Court a great many cases. I think the average verdict in the Supreme Court is $2,500 and if you will look through the records of the Supreme Court you will find once in a while a verdict for $10,000 or upwards, but in most cases the verdicts vary from $2,000 to $5,000. Now you are going to transfer most of that litigation to the City Court. It seems to me that the litigants in the City Court

ought to have the same right to go to the Appellate Division as a litigant who brings his action in the Supreme Court has under the Judiciary Committee's article the right to go to the Court of Appeals. Take this illustration: I bring an action against Mr. Nicoll in the City Court and get a judgment against him for $5,000. He cannot go to the Appellate Division from a determination against him by the Appellate Term unless the Appellate Division sees fit to grant him leave. They can refuse if they see fit. Two judges of the Appellate Term may dissent from the decision affirming the judgment yet he cannot go to the Appellate Division and he has got to pay the $5,000. In a case where three judges say Mr. Nicoll ought to pay and the other other two say he ought not to pay.

Mr. Nicoll — Cannot I apply to the Appellate Division?

Mr. Burkan — Yes, you can apply.

Mr. Nicoll — That is all I want.

Mr. Burkan — Now, I bring an action in the Supreme Court to recover $1,000 against Mr. Nicoll. He goes to the Appellate Division and if there is one dissent, as a matter of right, he can appeal to the Court of Appeals. I cannot see why the man who sues for $1,000 in the Supreme Court and if one of the justices of the Appellate Division dissents should have the right to appeal to the Court of Appeals as a matter of right and have his case heard there, while another man in the City Court against whom is awarded a verdict for $5,000, cannot go to the Appellate Division from a judgment of affirmance of the Appellate Term with two dissents. I cannot see the consistency of it. It is contradictory. What is sauce for the goose is sauce for the gander. I heard it stated here that we are swamping the courts. Now let us see. Under the present system in the year 1914 there were taken to the Appellate Term 282 appeals from judgments of the city court; in 1913 there were taken to the Appellate Term, 193 appeals from orders, and 355 appeals from judgments of the city court. Now if you are going to increase the jurisdiction of the city court, a great mass of these cases is going to be brought in the city court involving the construction of the charter of the city of New York involving the constructions of the statutes of this State, a great many questions involving the Constitution of the State, there ought to be some analogy, some uniformity respecting the final adjudication of questions concerning their construction. Those litigants ought to have the same right to go to the Appellate Division as a court of last resort that litigants have in the Supreme Court where a litigant can go to the Court of Appeals if the case involves a constitutional question. Now why should not those men have the same right to go to the Appellate Division?

Mr. Wickersham — I should feel that a large part of the work of the Committee had been in vain if this amendment should prevail. These questions involve simply questions between the litigants. They very seldom involve questions of law which should go to the high court, and in the interest of carrying out the project which we have tried to embody here, providing a means of possibly settling the law in courts of last resort disposing of litigation between citizens, with the right of appeal to a court of adequate jurisdiction. I trust the amendment will not prevail.

Mr. Shipman — I agree entirely with the theory on which that section of the Proposed Amendment is made but that jurisdiction of the city court and the county court was increased expressly for the purpose of relieving the Supreme Court of a load of its present work so that cases involving not more than five thousand dollars might be tried in those jurisdictions. But whenever a matter becomes of such importance which under the present Constitution would necessarily be tried in the Supreme Court and have all those rights of appeal, that it be given the same right in those courts, in other words, because the result of litigation in that other court is arrived at contrary to the view of the litigant, he ought not to be denied the privilege of going as far as he could go. It is really cutting down his rights if they hedge him around with such various difficulties, various forms of procedure necessary — but we ought not to cut off the right altogether.

Mr. D. Nicoll — Just a word, Mr. Chairman, in reply to the criticism that while we have conferred upon the Appellate Division the right to modify the sentence, we have not extended that principle to the Appellate Term in the causes cognizable by them. Now, the reason for that distinction is this, and it was put into the Constitution, although it is within the power of the Legislature to meet the evil that occasionally manifests itself in the city of New York perhaps more than in any other part of the State. It applies to cases where long terms may be imposed for major felonies or for all felonies. We have in the past had judges in the city of New York in the criminal courts who tried to gain newspaper reputation by imposing very heavy sentences. They want to be known as "severe" judges — a second Jeffreys. And they imposed sentences upon convicted men which are too severe. Thirty years for burglary! I have known a case where the sentence of twenty years was imposed upon a man for attempt to rape. Cases of that sort. Now, it was thought desirable under these circumstances to give the appellate division the right to consider the question of the modification of the sentence upon the appeal. Now, obviously that principle has no application to minor offenses, that is, for four months, six months or a year. That is the reason

for the distinction. The Appellate Term jurisdiction of appeals in cases where there are only short sentences. We are dealing with the question of long sentences. I don't think the Chairman of the committee has yet read to the Committee of the Whole the extraordinary number of cases which the appellate term of the city of New York now has to dispose of every year. Have you read that, Mr. Chairman? Two thousand. If you undertook to put upon it part of the business of modifying these appeals in excess of conviction of petty offenders, they would not be able to do business at all. Of course, it goes without saying that where you give this new jurisdiction and allow the Appellate Division to consider the question of modifying the sentence there will be a great deal more of activity on the part of those gentlemen of the Bar who practice in the criminal courts. We are doing something to increase their business, and we think we have gone as far in that direction as we ought. If you allow the Appellate Division terms to go into the business too, why, the criminal branch of the profession will be altogether the largest. Some delegate complains that there ought to be an appeal to the Appellate Division terms as a matter of right, as I understand, in certain cases. They complain that there have not been many allowances of appeals in recent years. I think I understood the gentleman to say that was true in about 95 per cent. of the cases. Now, the reason is because the Appellate Division, as was pointed out to you by a member of the committee, has been absolutely swamped. They have not been able to consider those appeals. What we are trying to provide by our present article in the Appellate Division in the First Department is an opportunity to consider appeals of that character.

Mr. Burkan — Under the amendment proposed by your committee, you are going to create two departments.

Mr. D. Nicoll — Two divisions, you mean?

Mr. Burkan — Two divisions, rather.

Mr. D. Nicoll — You are wrong about that. You mean the Appellate Division of the First Department?

Mr. Burkan — Appellate Division of the First Department.

Mr. D. Nicoll — We are giving to the Court power to divide itself into two parts when the pressure of business is so great that they cannot dispose of it without denying the members of the Bar and litigants that patient hearing to which they are entitled in every other court.

Mr. Burkan — Mr. Nicoll, don't you think if this Court is swamped by all those applications, that the Court would, by virtue of this new provision in the Constitution, create two new divisions of the Appellate Division?

Mr. D. Nicoll — They ought not to be created for any such purpose.

Mr. Burkan — Don't you think the litigants ought to be satisfied? There are cases in the Appellate Division where there is vigorous dissent and the litigant goes off dissatisfied and thinks he has not had his day in court.

Mr. D. Nicoll — That is exactly the kind of case where the Appellate Division would allow an appeal.

Mr. Burkan — Should it not be allowed as a matter of right?

Mr. D. Nicoll — We should not need to provide that.

Mr. Burkan — Why do you give the right to a litigant in the Supreme Court to appeal to the Court of Appeals where there is a dissent on the part of an Appellate Division judge? What is your theory for doing that?

Mr. D. Nicoll — Well, that was thought to be — it has been done in so many States. It was recommended by our Judicial Commission of 1890, and it was thought to be a matter of sufficient dignity and importance to be put into the Constitution. But, of course, the question of constitutionality of statutes does not often arise down in the courts about which you are speaking now. They are always certified. It is only in the Superior Courts where those questions come.

Mr. Burkan — Under your amendment, the right to certify to the Appellate Division is taken away from the Appellate Division term, is it not?

Mr. D. Nicoll — Yes, taken away. We trust it to the Appellate Division and allow appeals in proper cases.

Mr. Olcott — I am sorry to find myself in the slighest disagreement with the Judiciary Committee, because I approve its work most heartily. I am not even in disagreement with it in the two or three cases where they refused my pleas and I am not going to offer any amendments as to matters in which I was turned down and thumped hard, because I think they were right, I think they produced a better result than I asked them to produce, but Mr. Burkan has hit upon two matters that appeal to my conscience, and I cannot keep my seat without voicing my sentiments in favor of them. I think they should be adopted. I think they should be adopted as amendments of this great article if they are the only amendments that we adopt. The first is where he asks for an appeal from City Court judgments to the Appellate Division under certain circumstances. For the City Court, which from the beginning of my time, even when it was called the Marine Court, for some other reason or other which is historic, has had a two thousand dollar limit. Nobody could be sued or bring suit in it for more than two thousand dollars, and when the appeal from those judgments was to the Appellate Term it at least could not affect any case higher than that in amount and so we were not so much

concerned. But now we propose to increase the jurisdiction of our City Court, which, without any animadversion against it, has never drawn upon as high a type of lawyers to become judges as the Supreme Court has. Of course, it is an inferior court. Always has been an inferior court, and while we have had some very good judges there, perhaps, in the main, they are not men of such a high class as you find in the Supreme Court.

Now, it is proposed to give them a five thousand dollar jurisdiction. Now, just what will happen? A plaintiff will bring against me a suit of very dubious legality, involving five thousand dollars, he can bring it in the Supreme Court, and then if there is an erroneous judgment against me I can appeal to the Appellate Division. But, he can bring it in the City Court, and then if there is an erroneous judgment against me I can only appeal to the three judges of the Appellate Term. Now, I say that constitutes a discrimination which is as wrong as wrong can be, because it allows a suitor in a case so great as that to decide, in a case that his lawyer tells him is in doubt as to its legality, upon a weak court or a strong court.

Mr. Steinbrink — Judge Olcott, do we not in the city of New York face that precise situation to-day, in that suit may be maintained in the Municipal Court for a thousand dollars and judgment for a thousand dollars obtained, and that appeal necessarily goes to the Appellate Term, while an action might be maintained for one thousand dollars, or seven hundred and fifty thousand dollars in the Supreme Court and that appeal would go to the Appellate Division?

Mr. Olcott — We certainly do, and we suffer from that not only in thousand dollar cases, but two thousand dollar cases because the Supreme Court appeals are to the Appellate Division. You could have made your illustration twice as strong as it is. Now what I say is these things are necessary, because it is not humanly possible for the Appellate Division to hear appeals from every case, and even though we do hate to have to limit it in amount, that amount of two thousand dollars is fixed, but the trouble is you are carrying it up to five thousand dollars, and there you get into figures which will drive many a merchant in a small way to the wall if erroneously decided against him. If he is erroneously judgmented to the extent of five thousand dollars, why all that can be said is that he is unfortunate, just as in the case you have pointed out, where it applies to a thousand dollar case, and as you might have said to two thousand dollar cases, but I submit that it amounts to too great an extension of cases which cannot be appealed to the Appellate Division when you raise the limit to five thousand dollar cases.

Mr. Wickersham — When we come to consider the jurisdiction

of the City Court I think there may be a great deal of question as to whether that increase to five thousand dollars should be had. The Committee reported in favor of it because the Legislature had sought to do it and we made constitutional what the Legislature had attempted without authority to do. Personally I would much rather leave the jurisdiction of that court where it now is, or something like it, than to open the door to this succession of appeals which is suggested here.

Mr. Olcott — All right.

Mr. Wickersham — And if it were a question between the two I would not hesitate for a moment.

Mr. Olcott — Let it be one or the other, I don't care.

Mr. Wickersham — If it was the judgment of this body that one or the other should be done I should urge that it should be done by restricting the jurisdiction of the City Court rather than by opening the door to these appeals which would in a large measure destroy the work we have done here.

Mr. Olcott — Do one or the other, I don't care, but don't let us ply between Scylla and Charybdis. Don't tie us down to this and then carry the judgment of the City Court up to $5,000.

Mr. Wickersham — I think that can be taken care of, Judge Olcott.

Mr. Olcott — How are you going to carry it out?

Mr. Wickersham — I will carry it out this way. I think the matter before us is far more important than any other. This is the matter before us and when we come to the other, if there is a disposition of this body not to accept the whole programme, I trust they will make their criticism on that rather than on this.

Mr. Olcott — Will you now amend your proposition?

Mr. Wickersham — No. I said if I had to make a concession on one or the other, I would make it on that and not on this.

Mr. Olcott — You appreciate, General, we might be in between the two?

Mr. Wickersham — It is all in the body.

Mr. Olcott — It is all in the body, and as it is all in the body I have got to assert my ideas with all the strength possible and I do think that here is where there should be an amendment.

Mr. Stanchfield — Don't you think that when you come to consider the jurisdiction provision and the proposition of reducing the jurisdiction from five to three or two thousand dollars that then would be the time to bring up your question?

Mr. Olcott — Of course, you may do that, but I don't know of any better time when you can more successfully do it than now. You know very well that after this has been once voted upon there is mighty small chance to make a correction or an amendment in any respect.

Mr. Stanchfield — I do not think there is a desire on anybody's part to close the opportunity for amendment.

Mr. Olcott — I do not believe that this Constitutional Convention is con con as much as some people do, or even that there is any crim con which I heard applied to it the other evening, but I do think if the time goes by now when the people can correct anything that they want to correct,—

Mr. M. J. O'Brien — Mr. Chairman, will the gentleman permit me to make a statement? For the purpose of clearing up my own view of this I think, if you will pardon me, that we are discussing the subject from the wrong viewpoint. In view of the increasing appeals in the city of New York and the necessity of disposing of the business, we all agree here that there should be some place established, a competent court, which is entitled to the respect of the litigants, where he will be granted an appeal, and when he has had one appeal, he has had all that he is legally entitled to. I have never favored the provision, and I am not opposed to it — but I have never opposed the provision which allowed an appeal to the Court of Appeals where there was a dissent in the Appellate Division, and the reason for that, Mr. Chairman, is that these dissents are very frequently not on the substantive law, but they are based upon questions of practice. Very frequently a judge in the Appellate Division will very vigorously dissent from the conclusions reached because the procedure that was followed, to him, seems to have been violative of some rule or practice. Now, of course, if you leave it so that it is a matter of right you cannot control this except by dissenting opinions. It seems to me that that is the great force of the suggestion, that you cannot treat an appeal from a $5,000 judgment in the City Court and an appeal from a $5,000 judgment in the Supreme Court in a different manner. There is a provision now by which upon appeals from the Supreme Court to the Appellate Division in case of a dissent you can go to the Court of Appeals as a matter of right. There is no such provision in the appeal from the City Court to the appellate term. It seems to me, therefore, Mr. Chairman, that the question we ought to address ourselves to is not with regard to the limiting of appeals, but to the question which arises when we have given one appeal, but should there be permitted in both cases the right of the court up above to grant on a certificate the right to another appeal if the case is one that warrants it. The point that raises the difference between us is, or that I understand the point suggested here to be, that the additional right is given to litigants in the Supreme Court where there is a dissent. The question seems to be if we do disagree, should there be that right to the appeal where there has been a dissent in a case brought in the Supreme Court— should

there be any appeal from the Supreme Court to the Appellate Division, or should there not? I do not wish to elaborate further, as the points and reasons for them have been advanced by others, but I can only point the attention of delegates here to the point that the practice is exactly the same on appeals from the City Court to the Appellate Term as it is from the Supreme Court to the Appellate Division, except in respect to the one matter, that where there is a dissent there is an additional appeal given in the case which goes to the Appellate Division, whereas in the case brought in the City Court there is no such right.

Mr. Olcott — There ought not to be such a difference. I could not want a better sustentation of what I have advocated and what Mr. Burkan has. The judge has brought out my very point. I suggested that it ought not to be, and I believe it ought not to be. My objection is not because we raise it to five thousand, or that there is no harm done in the case of the two thousand dollar limit, but my objection is that the bigger the claim the more harm is done, and, as I say, there is many a merchant even in New York who would be clean-broke by an erroneous judgment of $5,000 against him, and he is not to have the same right of appeal that he would have if the plaintiff had chosen the higher court instead of the lower court to go into, and I do maintain that this amendment ought to be voted for. So much for that.

Now, Mr. Burkan has, by coincidence, introduced another amendment, that appeals just as strongly to my conscience, and that is, that the same opportunity ought to be given to the appellate court to reduce a sentence of one year, or a commitment of three years, as District Attorney Martin says, erroneously made by a police judge, as the Appellate Division has to reduce a sentence of five years or more erroneously made by court of record on the criminal side of the Bar, and I think more, I think more so. In most sentences of five years, we are not running the risk of there being excessive sentences, because they are leveled against men who are practically beyond hope. But, many sentences of one year, or even of three months, and certainly many a commitment, by an untrammeled and offhand, and oftentimes ignorant police magistrate, is starting a person off upon a career from which that person might be saved.

Mr. Burkan — Does the gentleman know that this constitutional proposes that within the county, if a man is convicted in a justice's court, the Appellate Division could in that case reduce or modify the sentence

Mr. Olcott — Yes, and it ought to be the same in New York city. I cannot see why the limit should be five years. It seems to me that could be modified.

Mr. Wickersham — You mean the county court?

Mr. Burkan — Would the county court have the right to reduce or modify the sentence?

Mr. Olcott — I say the county court would. I also say it should be the same in New York city, if the right is given anywhere.

Mr. Wickersham — Is there any right now?

Mr. Olcott — No.

Mr. Wickersham — No.

Mr. Olcott — There is no right now, but there is to be given one in certain sentences, under five years.

Mr. Wickersham — I understand that.

Mr. Olcott — Of course, I am not referring to rape cases.

Mr. Wickersham — I understand that. But, of course, Judge, you have got to be practical.

Mr. Olcott — I know that.

Mr. Wickersham — And unless you propose to create two appellate terms, you cannot give, it seems to me, the appellate term jurisdiction to review the sentences of all the petty offenses that come through the court of special sessions. I haven't here for the moment the statistics.

Mr. Olcott — The statistics are enormous.

Mr. Wickersham — But it is an enormous volume of cases, and it would invite people in every one of these cases to go to the appellate term, for the purpose of reviewing the sentences, and if you invite them, we will have a flood of applications beyond anything that you ever dreamed of.

Mr. Olcott — I do not agree with the General at all. Of course, the cases are numerous, and I have conceded it, and if it showed me there were millions it would not make any difference. I will admit they are tremendous, but there is not any possibility of an unreasonable percentage of those cases that would ever be appealed.

Mr. Wickersham — Oh, yes, there is.

Mr. Olcott — Most of them are drunkards and disorderly people.

Mr. Wickersham — But how can you assume, Judge Olcott, if it was so drawn, that every one of these offenders convicted of a minor offense and after they served some of the sentence, how can you assume that a very large proportion of them would not appeal? It requires no preparation. All a man has got to do is go up on the record, and you will have the appellate term sitting day after day listening to an attorney or some friend who is appealing on behalf of some misdemeanant, who thinks he ought to be confined three months instead of six, and while each one would be perhaps quickly disposed of, still the aggregate of

them would be tremendous. Look at the judgments now reviewed. Take the judgments in the municipal court, 1,108 of them last year. Suppose you had 1,108 appeals from the special sessions court to review the sentences, where would your appellate term be?

Mr. Olcott — Do you think, General, that there really would be anything that would take more than three minutes to pass on, on appeal, and even if it were so, do you think, if there be fatuousness and impossibility of success, during the first three or six months of these appeals, do you think, after the court sets a standard, that any lawyer or person convicted could see anything in bringing an application except in exceptional cases, and where an apparent wrong has been done in length of sentence?

Mr. Wickersham — Why shouldn't he? Why shouldn't he make application? He has only to walk over to the appellate term room and make his application and submit his evidence on behalf of so and so. Suppose it takes only about two minutes. Suppose you had 1,200 or 1,500 a year, The fact of the matter is that these courts are working up to the limit and if the provision is made which you advocate there would be just twice as much work to be done as now.

Mr. Olcott — Even if you had 1,200 or 1,500 spread over the year, it would not be any great addition to their work for these judges to dispose of them.

Mr. Wickersham — I do not believe it.

Mr. Olcott — But even if it is, in the interest of justice for the poor offender as well as the big and powerful offender, it seems to me that it should be done.

Mr. Wickersham — You speak of the big and powerful offender. I object to the line being drawn. We are dealing with all offenders, we are dealing with all commissions of crime, whether they are little or big.

Mr. Olcott — Oh, I am talking about the strong-arm men.

Mr. Wickersham — But, that is not the interpretation of the words "big and powerful offenders." I am seeking to offset the suggestion that this Committee is discriminating between the rich and powerful offenders, and the meek and the lowly, those who are guilty of arson and burglary and robbery and second-story work, or porch-climbing and so forth, and other light-fingered gentlemen.

Mr. Olcott — The porch-climber may receive a sentence of twenty years, so I certainly would have him in mind when I said "The big and powerful offender."

Mr. Wickersham — I am glad you did.

Mr. Olcott — Any way, I use the terms in that sense. I do not believe that — perhaps I should not say it, but perhaps I

have a charity client now and then, but I don't often have them, and I cannot say that I deal very much with criminal law, but when I do, it is generally in the greater cases, and I do not mean, when I say that, to point a finger of scorn at you, but even if I did, it would make no difference to me, be he rich or poor, be he bankwrecker or second-story man, when it comes to the question of the righteousness of his sentence, as between the man who wrecks a bank and the man who is sentenced for a year for stealing a roll because his wife is hungry — and I say that, not because I want to move you to tears —

Mr. Wickersham — You move me deeply.

Mr. Olcott — But only to water. I am not trying to do anything of that nature, but let us have the respect of every voter in this community, to whom we are to appeal within a very short time; let us impress them with the fact that we are treating all alike, rich and poor, you and I. We do not want the public, nine-tenths of whom are poor — we do not want its suspicions of discrimination in any way increased against this document of ours — I do not mean by that that I am trying to threaten you if you do not accede to what I say, this document will be beat; I do not mean any such a thing, but I say we want the confidence and respect of the public, which can only be found by a demonstration that we believe in the equal administration of every law. We have said "No" to Mr. Barnes, when he used those words. Perhaps we said it rightly. Perhaps we said it wrongly. I think wrongly, as my vote shows. Now, don't let us say really there isn't any escape from it, irrespective of what Mr. Wickersham says, that it will take three inferior judges of the Supreme Court too much time to take care of it.

Mr. Dykman — Inferior judges?

Mr. Olcott — If you do not believe it, come over across the bridge and find out.

Mr. Dykman — We don't have any.

Mr. Olcott — Let me finish. This yielding business gets on your nerves. I yielded to Judge O'Brien and he proceeded to make my speech for me, and I am glad to yield to such a delegate, but I am afraid to yield any more. I want to finish my sentence. Don't let us let the voting public point to this as an evidence that we are treating their poor girls and boys, who are convicted of a small misdemeanor — that we are depriving them of just treatment chiefly to save the court's time through the latitude we give for the review of punishment laid upon for the great offenders; and let us treat all alike, rich or poor, socially pedestalized or thugs of the street.

Mr. Harawitz — Mr. Chairman, I have listened with great

care to the discussion this morning, and it seems to me there is a great deal of misapprehension in respect to one matter. Several of the members, including Judge Olcott, have spoken about appeals from magistrates. Now, there is no appeal from a magistrate's decision to the appellate term, especially in the amendment by General Wickersham. That part has been eliminated entirely, the appeal from a magistrate's conviction, and it is true, as Judge Olcott has said, that a magistrate may arbitrarily impose a sentence of three years upon a woman or six months upon a man, but that appeal goes to the court of general sessions, and that court has the inherent power and has the right, and it has always exercised that right, by reducing or modifying a sentence where the court thought the sentence imposed was too severe and where the court did not think the facts or law warranted a reversal of that judgment. Now I have practiced considerably in those courts, and while I personally feel a magistrate should not have that great power that he possesses in arbitrarily being able to sentence a human being to the term of three years, yet I understand the Judiciary Committee have considered that subject and have deemed it wise to let the law stand as it is. But I feel as Judge Olcott does in reference to giving the appellate term the power to reduce the sentence. If a principle is right in one thing, it is right in the other, and I feel the same way about both amendments. I have listened with great care to Mr. Delancey Nicoll and Mr. Morgan J. O'Brien, and have tried to find out from their arguments where they can make the logic and reasonable distinction of allowing a litigant who is sued in the supreme court and who chooses to bring his action in the supreme court, of going up to the Court of Appeals, the last tribunal in the State, as a matter of right, simply because one judge of the appellate division dissents, and yet foreclosing that right to the unfortunate litigant in the city of New York who gets a five-thousand dollars judgment against him, simply because three, or two, judges of the appellate term affirm that judgment, despite the fact that one judge may dissent. Now I cannot see, on principle, where that is right. It may seem right to the committee to save the time of the State or the time of the Appellate divisions, but I say that the rights of the litigants come first. I do not care how long we would be behind in our appellate division. I say that justice should be meted out to each individual alike and that justice is certainly not meted out to each alike when we will not allow a man who is sued in the city court the same privileges which are allowed to a man in the supreme court. Now I hope, gentlemen, that this amendment by Mr. Burkan — and I believe it is a real good amendment, as Judge Olcott has pointed out and as I have just argued — I hope

that both amendments will carry. Now the principle is that an appeal shall be allowed to the appellate division in the case of higher crimes. There is some weight, and a whole lot of weight, in the arguments by Mr. Nicoll and Delegate O'Brien to the effect that in those cases men are convicted of felonies where they may receive sentences of from thirty years to life. In those cases the appellate division should have the right to review sentences as well as to reverse convictions. But if the principle is right in that regard, I firmly believe that the same principle is right in the other regard where in the court of special sessions — some of you up-State men may never have been in our city courts or court of special sessions and seen the rapidity with which cases are tried there and what little time is sometimes given to a most important case where a man is sentenced to one year in jail and in addition thereto is fined the sum of $500, or one dollar for each day, making almost a term of imprisonment of three or three and a half years for a petty offense. That might be a case where the court of special sessions only devoted three to five minutes to that case, or sometimes ten minutes. I say that the appellate term should have the right to review that sentence just as much as our appellate division should have the right to review a more severe sentence.

Mr. Coles — It seems to me strange that in a Convention made up, as this is, of lawyers, largely, such remarks should be made as those by Judge O'Brien that we were looking at it from the wrong angle, and that such argument should be made as was made by our distinguished friend, Mr. Nicoll, that the court would be congested and that we were aiding one particular class of lawyers.

It seems to me that the question here should be, are the courts made for the people? Are they made for the litigants or are the litigants of secondary consideration? First of all, we must supply sufficient courts and sufficient judges to meet the needs of the people and not be crowded out because it would congest the court or because it would aid any particular class of lawyers. The question should not be how to relieve the courts, but how best to serve the people, how best to serve the litigants. I am quite in accord with Judge Olcott that it is the small offender that eventually becomes the great criminal, and that is the man to whom much consideration is due, more consideration, I believe, than has been given by this article introduced here by the Judiciary Committee.

Mr. Marshall — We must view this proposition, or rather the two propositions which have been presented by Mr. Burkan, from a certain logical standpoint. No litigant has a natural right to more than a single hearing. Our policy, however, has been in this State and in almost all civilized countries to give to every litigant

at least one appeal and that is ingrained into our policy except in the case of matters arising in some of the lower Courts where hitherto the consent of some Superior Court has been required in order to permit an appeal to be taken. . The Committee on Bill of Rights has dealt with that subject and has offered an amendment which provides that in every criminal case a defendant shall have at least one right of appeal, carrying out therefore the policy of this State to its furthest extent and making it uniform that there shall be one right of appeal. Beyond the giving of one right of appeal there arises a number of considerations of public policy which must affect a Constitutional Convention or any law-making body in laying down a rule of procedure, because this is procedure, with respect to the subject of appeals. From the earliest days there has been a limitation upon appeals to the highest court, or to a second court. In most states of the Union there is but one appellate tribunal and therefore but one right of appeal. In this State we have had the luxury frequently of two rights of appeal, so that we have gotten accustomed, to some extent, to regard the right of infinite and unlimited appeals as something which is a part of our fundamental privilege.

Now, there is no such right of taking multiple appeals and if that right were once recognized there would be no end to its extension because there are some lawyers — and I confess that sometimes I am of that class — who would appeal if there were still another court above the Court of Appeals and still another court above the Supreme Court of the United States. I would do so myself if I felt I was right in my view. But that is not the proper way to regard the matter. One must stop somewhere and it is the interest of the State which is involved in respect to the limitation of the right of appeal. I do not consider the question as to what is convenient or pleasant or agreeable to the courts, nor is it the proper thing to consider the question merely from the standpoint of what is convenient and desirable on the part of litigants. The question is, what is the interest of the State in respect to this subject of appeals. It has always been a maxim of the law that it is to the interest of the republic that there shall be an end to litigation and so that principle, applied to the question of appeals, finds reasonable application when we say that, as a general rule, as a general principle, there shall be but one right of appeal. Now, there are classes of cases, however, which require perhaps further consideration and those are generally cases which are of public importance and which involve consideration, not of fact, not of the concrete case between A and B, but as to what is the law as applicable to other litigants, as applicable to the body of our jurisprudence, as bearing upon controversies, which may

case in the future between the citizens of the State. Now, for that reason, in order to settle a wrong and not merely to give a litigant the luxury of many appeals, we have established in this State a Court of Appeals as a court of last resort in order that that tribunal may reconcile differences between the different appellate tribunals of inferior jurisdiction and may, if possible, establish one rule of law, one homogenous body of law throughout the State. Now, if the right to appeal shall extend to every case, as suggested by Mr. Burkan, as a matter of right, then the logic of his argument would not lead him to stop by permitting the appeal as a matter of right from the appellate term to the appellate division, but, under like circumstances, it would permit that particular case to be appealed as a matter of right from the Appellate Division to the Court of Appeals. There is no middle ground if that principle of appeal as a matter of right should be once recognized. In this State, ever since 1870, and I think even before that time, there has been recognized this distinction with regard to the right of appeal, that in cases which have been commenced in an inferior court the right of appeal shall only extend to one superior court and cannot be extended to others. Thus, the Code has always provided that, in the absence of permission to appeal from the old General Term or from the Appellate Division to the Court of Appeals in a case which began in an inferior court, the right to appeal would not exist in any case. That principle is the same principle which has heretofore applied with regard to appeals taken to the Appellate Term. Under the existing law, no appeal can be taken from that court to the Appellate Division except by consent of the Appellate Term or of the Appellate Division. There is no appeal as a matter of right at present under those circumstances. This provision which we are considering recognizes that same situation and applies that same principle which has, for more than forty years, and I think for more than seventy-five years, been the policy of this State with regard to appeals from inferior courts.

We have in this section, which is now under consideration, provided for an Appellate Term, a stronger court than has heretofore existed under that name. We have made of it a court, not of three, but one which may consist of five members. We have given to that court stability. We have provided that the members of that court shall at least continue for one year instead of being a shifting tribunal as it has heretofore been. We therefore have a stronger court, a more unified court, a more homogenous tribunal, a court which will devote its entire time to the consideration of appeals and will not, as it now is, or its members now are, be driven from one tribunal to another to perform duties which

are disconcerting and disquieting and which will prevent the members of that court from performing their duties under the most favorable circumstances and conditions. Therefore, when we have established a court of high character, of a nature which will be more likely to ensure careful consideration of the appeals which come to it from lower courts, we have given an additional reason why the rule which has heretofore applied with respect to appeals from inferior courts should not be interfered with but should rather be continued in full force and effect.

Mr. Wickersham — The hour of one o'clock having arrived, Mr. Chairman, I move the Committee take a recess until two-thirty.

The Chairman — The question is upon the motion of General Wickersham that the Committee take a recess until two-thirty. Those in favor will signify by saying Aye, opposed No. The motion is carried, and the Committee stands in recess until two-thirty.

Whereupon, at 1 o'clock p. m., the Committee took a recess until 2:30 p. m. of the same day.

AFTER RECESS — 2:30 P. M.

(Mr. Wagner in the Chair.)

Mr. Marshall — It was my effort before recess to show that there is no absolute right of appeal and that certainly the policy of this State has been to discourage multiple appeals; that, so far as inferior courts are concerned, it has been the uniform policy in all kinds of cases to prohibit more than one appeal except in so far as an appeal might be allowed to a higher court by an appellate tribunal. I was about to indicate that the recommendation of the committee merely carries out, so far as appeals to the Appellate Term are concerned, that uniform policy to be found in our former Constitution, and in our Code of Procedure and its successor, the Code of Civil Procedure. The gentlemen who are seeking to give this further right of appeal as expressed in the amendment proposed by Mr. Burkan seem to have an entirely erroneous idea on the subject of the absolute equality of all litigants. Everybody knows that a man who has a ten dollar claim cannot possibly bring that action in the Supreme Court or in a court of superior jurisdiction. In the rural districts he must go to the Justice's Court; in cities he must go to a Municipal Court. He has no right to go into the Supreme Court except under penalty of paying a bill of costs which would destroy absolutely all of his recovery and perhaps impose upon him besides a further

burden. So that all of this suggestion of lack of equality is entirely beside the question and is contrary to the traditions of our State. And we must not set our faces against those traditions. They are based on good sense and on experience, and when they have been undisturbed for a long period of time they certainly constitute a proper rule of action for a constitutional convention. We have heard some suggestion made that this Convention is being criticized on the theory that it is making a different rule for the poor from that which applies to the rich, and some newspapers have indulged in such criticisms. If we are conscious of the rectitude of our purpose, if we are satisfied that we are doing the right thing to the State, if we are satisfied that we are looking, first and above all, to the universal interests of the State, we need not worry about any such criticism. It is absolutely unjust and unfounded, however, to make a suggestion that in this respect there is any attempt to differentiate between the rich and the poor. Both are treated alike under like circumstances. There is no such thing as a classification. If there is any principle which is enshrined in the Judiciary Article, which, more than any other provision in the Constitution, declares that there shall be no differentiation between the rich and the poor, it is to be found in the Judiciary Article as it reads to-day, and it is to be found in the proposed Judiciary Article, that the right of appeal shall never be made dependent upon the amount involved; in other words, that the poor man can go to the highest court of the State, as well as the rich man, in so far as amount is made the test of appeal to it. That does not, however, prevent the Constitution and our laws from taking into consideration the question as to the tribunal whence an appeal is taken. That principle has always existed, and therefore, unless our friends would balk at the idea of following to its logical conclusion the principle which they are now advocating, the right should exist to appeal from the Justice's Court to the County Court, from the County Court to the Appellate Division, from the Appellate Division to the Court of Appeals, from the Court of Appeals to the Supreme Court of the United States, in a case which involves only the sum of $10. Now that is a manifest absurdity and it would be injurious to the State. We must, however, remember another thing. We have heard much said about the law's delays. There has been much criticism, and in some sense just criticism, against the law's delays. If, in any case arising in an inferior court, there shall be a right of appeal not only to an intermediate Appellate Tribunal, like the Appellate Term, but also to the Appellate Division, what answer can we make to the claim that we are not trying to prevent the law's delays but that we are

encouraging the law's delays? Are we to submit to the criticism, which would be a very natural one, that a Convention consisting of a preponderance of lawyers are framing a constitution for the purpose of creating business for lawyers, of encouraging appeals, of continuing litigation to the bitter end, of setting our faces against the time-honored maxim to which I have already adverted, that it is for the interest of the State to put an end to litigation? But our friends who are thus seeking to afford new avenues for appeals in absolute contradiction of the policy which we have heretofore pursued are openly directing to that their criticism, which I consider a just criticism, that is, that we are encouraging litigation where our policy should be to put an end to it as speedily as possible.

Now, it is said, in respect to appeals from the Appellate Division to the Court of Appeals, we are allowing appeals where a constitutional question is involved, where there has been a diversity of opinion between the court of first instance and the Appellate Division, and where there has been dissent in the Appellate Division, although it may affirm the decision of the primary court. But that is practically continuing the policy that we have heretofore pursued. It is merely in a different form expressing the limitation upon the right of appeal that has heretofore existed, and it is not changing the rule, not in its essential features; merely in its phraseology is there a difference between our present proposed provision and the present provision of the Constitution. But in respect to these cases which originate in an inferior court, the Proposed Amendment is attempting to make an entirely different rule, and that is one which leads in the direction of continuance of litigation in the face of the fact that we are strengthening and improving the Appellate Term, that we are creating a court which is more deserving of the name of a court than the Appellate Term as it at present exists. And I should consider it most unfortunate if we embarked upon this new policy with regard to the Appellate Term. Now, it is said that where there is a vigorous dissent, there should be a different rule from the case where there is a unanimous affirming. In respect to the appeal from the Appellate Term to the Appellate Division under certain circumstances, I don't see that any possible injustice will be done if the question of permitting an appeal is left to the Appellate Division, because it is certain that if an Appellate Term of the character now being created shall indicate a reasonable divergence of opinion in regard to the question involved, the Appellate Division would be more apt to allow an appeal under such circumstances than it would now under the existing condition of affairs and with respect to courts as they are now constituted. And I should say that it would

be infinitely better to permit the allowance of an appeal to be restricted to the action of the Appellate Division, rather than to have a division of responsibilities, of having the Appellate Term as well as the Appellate Division vested with the power of granting such appeals because it will surely follow that if both courts have that power, the Appellate Division would be quite likely to say if the Appellate Term chooses to allow an appeal, that that court, after full consideration of the case, had reached the conclusion which presumptively was a wise conclusion, and would not be so likely to give its independent judgment upon the question as to whether an appeal should be allowed, as it would if the right were vested in it alone and the sole responsibility were imposed upon it in that regard. And the tendency of an Appellate Term, if vested with the discretion to permit an appeal, would be to prohibit the granting of such an appeal, because the court would say, "Why, we are satisfied that we have done the right thing; we have given this case very careful consideration; there is no occasion for another appeal." And we have in that respect followed the procedure which is to be found in the section relating to the Court of Appeals, where the Court of Appeals is vested with the power of allowing an appeal in cases as to which the right to appeal as of right is not conferred. There we have a harmonious view, a harmonious theory, and the only reason why that is departed from in respect to allowing certain cases to go as a matter of right from the Appellate Term to the Appellate Division is because we are in that respect following the uniform practice of the State, and one which is based upon good reason and sound policy.

It is said that the jurisdiction of the City Court is to be increased to $5,000, and for that reason there ought to be a change. Now, so far as I am concerned, personally, I would be entirely willing to see the jurisdiction of the City Court reduced to $3,000, if that would make any difference, and if our friends would be satisfied by that change, I would not have any objection to a reduction of the jurisdiction of the City Court to $3,000. But in any event, I see no reason to depart from our policy, and while I am discussing that question of jurisdiction I might here interpolate the thought that I think that it is a most unfortunate thing that the Legislature in its last session increased the jurisdiction of the Municipal Court from $500 to $1,000. That should never have been done, and it is largely because of that increase of jurisdiction that the claim has now been made that the jurisdiction so far as money is concerned of the City Court should be increased from $2,000 to $5,000 in order to differentiate that court from the Municipal Court. Now for these reasons I think that we would

be making a very serious mistake if we any way varied the proproposal of the committee with regard to the jurisdiction of the appellate term. As to the criminal feature of the case, which has been adverted to by various gentlemen who have spoken, and in most eloquent and persuasive terms by all of them, especially by Mr. Burkan and Judge Olcott, I can say that I think they are in error in the views which have been expressed. In the first place, so far as criminal proceedings are concerned, cases which originate in the magistrates courts would be appealable — and now are, as a matter of right — to the court of General sessions and that court would be entirely able to cope with the propositions which have inspired the criticisms of the gentlemen who have suggested a change in the power of the appellate term with respect to dealing with the *quantum* of punishment which is to be imposed. Those cases, therefore, are entirely out of the question, as has been pointed out by Mr. Harawitz. We are not dealing with that class of cases at all, and the greatest chance of error and mistake and harshness is to be found, I have no doubt, in those cases which come from a single magistrate rather than those which come from the only criminal tribunal as to whose judgment they are to be reviewed by the appellate term, namely, the Court of Special Sessions of the city of New York.

Now that Court of Special Sessions is not a court which consists of one judge only, as is the case with regard to a magistrate and as is the case in those criminal proceedings which go to the Appellate Division and as to which the Appellate Division is given the right of reducing the sentence. In all of those cases the trial is before a single judge, either a judge of the General Sessions or a county judge or a justice of the Supreme Court; whereas, in the case of appeals from the court of Special Sessions, it is an appeal from a court which consists of three members, and therefore three judges, who have exercised their judgment with respect to the extent of the sentence which is to be pronounced against the defendant. There is, therefore, not the reason which exists in the case where a judgment is pronounced by a single magistrate or a single judge because here the sentence is pronounced by several judges — either two or three; generally three. There is, therefore, no such necessity for the granting to the appellate term of the power to reduce sentences. I do think that the suggestion which has been made, and which has to some extent been belittled, that the granting of the right to reduce sentences may be the occasion of a multiplication of appeals from courts of sessions to the appellate term. So far as I am concerned, I should say, looking at the matter as it would strike the average practitioner, there would be scarcely a case in which the lawyer

might not be justified, or at least be urged by his client and yield to his urgency, to take an appeal to the appellate term in practically every case which comes before the Court of Special Sessions. There is nothing to lose; there is something to gain, and there is a strong temptation to yield to the suggestion that an appeal should be taken in those cases. Now you can say that those cases will take little time. That is only a figure of speech. It is very natural that such cases must be presented to the courts in such a manner as to enable the court to determine what the nature of the case is, what the facts are, what the basis is for claiming a reduction of sentence. That would necessitate the reading of a large number of records and it is to be presumed that the courts to which these appeals are taken will read the record. I know, from very strong evidence which has come to me, that the judges of the appellate term now devote sixteen hours a day, some of them, to the consideration of records in the cases which now come before the court. They do that because they believe, as is of course the fact, that in the conscientious performance of their duties it is necessary that they shall become entirely familiar with the records and with all the facts bearing upon the cases involved. And in such a case as an appeal from a conviction, that same rule would necessarily apply. There is nothing to be gained, in my judgment, by adding this power to the appellate term. It is only weakening the court and there is no possible reason why we should take such a risk. Now, all this talk about appeals is very beautiful, but if you are talking to the newspapers, if you are talking for outside consumption, bear this in mind: if you carry out your idea of these multiple appeals, it will be necessary to add to our judicial list to a great extent. It will add to the expense of the administration of justice; it will add confusion to our system; it will give rise to the suspicion that a convention of lawyers is trying to create positions for some of their friends and for the members of the legal fraternity. We cannot afford to have such an idea go forth. As it is now, our judicial system, even under the most conservative view of the case, is becoming top-heavy. We are talking about a possibility of the Court of Appeals sitting in two parts, with fourteen or sixteen judges. We have four appellate divisions, in two of which there are to be five judges; in one of them, seven; and another with ten or twelve. We are to have this appellate term with three or five judges in each of the first and second departments. Where will it end if you keep on adding to the jurisdiction? Bear that in mind in the determination of that question. Let us have a practical view of the subject as well as keeping in mind the underlying theory of our appellate courts and of our entire judicial system.

Mr. Newburger — I call Mr. Marshall's attention to the fact that, as far as the criminal part of it is concerned, his fears are certainly not borne out by the facts of to-day. In the city of New York, in the Greater City, there are about two hundred thousand cases tried in the magistrates' courts each year. Now they have the right of appeal to General Sessions where their cases or sentences might be reduced or modified. We have not heard any complaint about General Sessions being swamped with work on account of this right of appeal that the defendant has. So far as the appellate term is concerned, and this jurisdiction which is about to be conferred upon it, the Special Sessions of the city of New York last year — there were something like fifteen thousand cases brought in the magistrates' courts. Of those fifteen thousand cases, seven thousand five hundred pleaded guilty, so that those who pleaded guilty would certainly have nothing to do with the appellate term. Their cases are disposed of. Only about twenty per cent. of those fifteen thousand cases were convicted upon trial. Now there would be only this twenty per cent. of the fifteen thousand which would in any way be concerned with an appeal for the purpose of having the judgment of conviction against them reversed or for the purpose of having the sentence modified or reduced. I think we can be reasonably sure that, of that twenty per cent., a very small percentage indeed would go to the appellate term for the purpose of having any reduction in their sentences. I cannot, for the life of me, see, so long as you give the right of appeal to the appellate term, why there should not be carried with that the right upon the part of the appellate term to reduce or modify the sentence.

Mr. Ostrander — I suppose one of the chief offices of a constitution-maker is to have a little regard for the under-dog and to try to protect his rights somewhat. We are living in an age that is somewhat theatrical. If we get up behind the curtain we always find the stage properties and peculiar characters that go with the play; we have the hero and we have the villain and we have the injured maiden and all the characters that go to make up a good play. Our modern newspapers are not at all behind the theatre. If a proposal to inaugurate the millenium to-morrow morning were brought in here by our fellow-delegate, Mr. Barnes, it would be about as popular as Leo Frank in Georgia. On these occasions people are accustomed, the newspapers particularly are accustomed, to put the interests of the poor suffering man at the bottom and they stir up all sorts of race strife and trouble between conditions of men. I have not very much sympathy with that sort of doings, but we are confronted by a condition and not a theory, as we have been told by able gentlemen. What Ceasar wanted did not appear

to be so much that his wife should be all right as that she should be above suspicion. Now, the peace and security of the community which we are trying to bring about rests, perhaps, not so much on the actual way of administering justice as they do on the way people look upon the way it is administered. If we, in making this Constitution, can do away with any of the causes of suspicion, of unrest, of trouble, and give people some fair and reasonable grounds to suppose that they are getting a square deal, I think we ought to do it. I remember when I was a boy in college I used to have some companions who were not quite so demure and well-behaved as I was myself. When we went down to an entertainment sometimes they added a refrain to a song that happened to be going on in vaudeville. I remember at that time Gilbert and Sullivan had an opera or an operetta which was being sung and one of the couplets was:

> "I would have you understand
> That in this land here,
> There is just one law
> For the peasant and the peer."

And usually my wicked companions came in with the refrain, "Yes, there is like — uh, huh." I think we ought to frame our courts so that there will be an equal right for every sort of fellow. I remember hearing of an orator who was holding forth on a political platform and extolling — as only the good political orator can — the blessings of this great republic of ours, and he took occasion to say that he was very glad that in this country one man was just as good as another. And the fellow sitting in the front seat who had been gazing up with open mouth broke in with "you are right, and a dom sight better." Don't let us have the impression founded upon any sort of reason that in matters of justice one man is any better than another, even though the suspicion may not be extra well founded. Let us try to remove all suspicion, if possible. These courts that have their appeal to the appellate term, I hold to be courts of very great — in fact, I think the very greatest — importance in this country. I suppose I may be pardoned for having a little bit of prejudice and a slant in favor of the very ordinary individual. For about 250 years, since my old Dutch ancestors came over and dropped in along the bank of the Hudson, one family of them in the old "Spotted Cow" that landed in Ulster county and others in another ship of similar dignity that came up here, we have always been a race of very ordinary folks. We have done the small things of life. They began first to run boats from Rhinecliff down to Coenties Slip and carried down beaver skins and brought up, as the old narrative goes, "cow calves" for distribution. They carried the merchandise of that day. When war

came along I don't find that many of them had commissions but they were, mostly all, carrying rifles in the ranks. So we have been doing the ordinary business ever since, just as I suppose the great majority of people in New York city and in this country are doing. Of course, we, speaking for our great family of common folks, have our quarrels just as the family of greater folks have their quarrels. And the peace and security of this whole country depend upon the right determination of the difficulties that arise between the common people, and the courts that have to do with the greater number of those quarrels are more important than the courts that have to do with fewer of the larger questions so far as they bear upon the contentedness, the peace and the well-being and well-feeling of this great American family of ours. So that I say the very best judges that we can afford ought to be provided for the quarrels that pertain to a great majority of people. By that I do not mean that it needs the great constitutional lawyers in the country to pass upon minor matters, but it means that we shall have men of common sense and probity and men in whom confidence will be reposed by those peoples whose quarrels are to be settled. Now, I notice that there is a great multitude of cases that come before these inferior courts that have their appeal to the appellate term. Naturally, the three or five judges who dispose of that great multitude of cases that are bound to be appealed to them, have to do it in a somewhat hasty way. They have to shoot a good many things on the wing, just as the trial justice has to, where he is burdened with affairs. If these courts below have a jurisdiction up to five thousand dollars, there is bound to be cases of considerable importance to the people engaged. Now, the old colored man, who was told by his master to go on to the war and take his part in the fight, demurred a little bit, and the master told him to go ahead. He says, "It doesn't make much difference whether there is a nigger more or less, anyway." "Well," he said, "boss, it may not make much difference to you, but it makes a powerful lot of difference to me." Now, these cases that are of some importance that get into these lower courts and come up to this appellate term, are a lot of importance to the people who are engaged in them, even if they would not look very big alongside of some syndicate case that was being tried in a more dignified court. We have given two appeals under some certain cases to the man who is fortunate, or unfortunate, enough to start in the Supreme Court, or as suggested here, to the man who commits a burglary. Now, if he is to be entitled as a right to two appeals, under certain circumstances, it doesn't seem to me that it is unreasonable that the man who had to start in a lower court should, under similar circumstances, have a right to two appeals himself, and to get up to the Appellate

Division. But my friend says there is no need of a man having two appeals. If we give it to one, I think we should give it to the other. My friend again says that where a matter is of any importance, of course the Appellate Division will listen to his cry and allow him an appeal. Well, I think my experience would go to show that an Appellate Division which was passing on fifteen or eighteen thousand cases a year and sitting up all night to do it, would not be over eager to hear the cry of a man who came up with another case. I think they would be very likely to be, as we say, from Missouri, and have to be shown pretty thoroughly before they would ever let him have his appeal, and if we are going to give anybody a right to two appeals under certain conditions, I think we ought to give the same right to everybody. It has been suggested that making provision for such an administration of justice as this would cost a good deal of money. Nobody any more than I feels the necessity of confining our expenditures within very close and reasonable limits. But I think the same principle applies to this that applied to the old lady's boarding house. When her boarder was reminded by her that the butter he was eating so ravenously had cost thirty-five cents a pound, he said, "Madam, it is worth every cent of it." I feel very strongly inclined to Mr. Burkan's amendment which would, I think, satisfy all classes of people, that they were getting about the same kind of justice and that they were all being dealt with on the level.

Mr. Wickersham — As a result of this discussion, I will ask unanimous consent to return to section 2 for one moment, and entertain a motion to amend by inserting on line 3 of page 6, after the word "appellate division" the words "or the appellate term, as the case may be." That, Mr. Chairman, will give to the Appellate Term the same right to review sentences as is proposed to be conferred upon the Appellate Division. I find on looking into the subject a little more carefully that power is to-day exercised by the County Court. It is exercised by the General Sessions Court. We are taking from the General Sessions Court a jurisdiction which it now has to review the judgments of the Court of Special Sessions and devolving that upon the Appellate Term. I had some misgiving as to the effect of conferring upon the Appellate Term this jurisdiction of review, but since we rose for the recess, after conferring with those interested, and who have more intimate practical knowledge than I, with the workings of the system, I have yielded my fears to the extent of making that amendment, and I would ask unanimous consent for its consideration before passing to the next subject.

Mr. Olcott — I rise to second the motion of General Wickersham and say that it demonstrates to my mind the justness of the

very great confidence which we all have in the fairness of Attorney-General Wickersham.

Mr. Harawitz — Simply to correct the record. I don't think General Wickersham meant what he said when he says he takes away from the power of the general sessions the right to review cases in the courts of special sessions. The general sessions has not that. The Appellate Division has that, and we take that away from the Appellate Division and give it to the Appellate Term.

The Chairman — Is there any further discussion on the amendment which General Wickersham just offered? The question is upon the motion of Mr. Wickersham to reconsider the vote by which section 2 was adopted. Those in favor of the motion signify by saying Aye. The motion is carried.

Mr. Wickersham — The motion now, Mr. Chairman, is to amend as stated.

The President — Mr. Wickersham offers the following amendment, which the Secretary will read.

The Secretary — By Mr. Wickersham: On page 6, line 3, after the words " appellate division " insert " or the appellate term as the case may be."

The Chairman — The question is upon the adoption of the amendment offered by Mr. Wickersham. Those in favor signify by saying Aye, opposed No. The amendment is adopted. The question now occurs upon the adoption of section 2, as amended. Those in favor of the motion say Aye, those opposed No. The section is adopted.

Mr. Wickersham — Only one consideration, it seems to me, would urge a possible modification of section 3, in view of the criticisms which we have had here to-day. The Committee will remember that to-day the only right of appeal from the Appellate Term to the Appellate Division is that which is given by the Appellate Term itself or by the Appellate Division.

Mr. Westwood — That is the present law.

Mr. Wickersham — That is the present law. Now, there is just one class of cases, and I don't think it is a large class, and I don't think it is a very important class, but on principle it is hard to justify in giving the right of review of the judgment of the Appellate Term by the higher court where the Appellate Term in the exercise of its jurisdiction under section 1371 makes a new finding of facts and enters a new judgment. Of course, that case only arises or only can arise in appeals from the county courts where the county courts in the exercise of the limited equity jurisdiction they possess enter judgment or findings which go to the Appellate Term. I am willing to concede that in this case appeals may be taken of right to the Appellate Division only

where the Appellate Term, reversing or modifying a judgment, makes a new finding of fact and renders a judgment thereon. As I say, it is not a very important class of cases. My preference would be not to have it in, but still as a matter of principle there is a good deal to be said for it, and, therefore, in order to bring up that question, I will offer this amendment. I do not include, and I entirely agree with what Mr. Marshall said concerning the unwisdom of authorizing an appeal from the Appellate Term every time there is a dissent from the judgment of the majority court and I think that in the interest of the system which we are establishing that should not be done.

The Chairman — The Secretary will read the amendment.

The Secretary — By Mr. Wickersham. Page 7, line 3, after the words "may be" insert the following "taken as of right to the appellate division only where the appellate term on reversing or modifying a judgment makes a new finding of fact and renders judgment thereon, appeals to the appellate division also may be." Strike out in line 3, the words "only" and "order of."

The Chairman — Will Mr. Donnelly withdraw his amendment now?

Mr. Donnelly — Mr. Chairman, yes, the amendment as offered by General Wickersham is satisfactory to me, and I am for that amendment, and I take it that it covers cases likewise where the City Court has equity jurisdiction.

Mr. Burkan — The Appellate Term reviews under the present system the cases appealed from the Municipal Court as well as the City Court. The jurisdiction of the Municipal Court to-day is limited to $500, and by an act of the Legislature passed at the last session the jurisdiction was increased to $1,000. The limit of the jurisdiction of the City Court is $2,000. Under the present system, upon an appeal taken from the City Court, or the Municipal Court to the Appellate Term, the Appellate Term may, of its own motion, give leave to appeal to the Appellate Division. If it is denied by the Appellate Term, you may then apply to the Appellate Division. You get two chances, two opportunities for getting permission to present your case to the Appellate Division. In case of a dissent the Appellate Term might in the exercise of its discretion grant leave to appeal to the higher court. Under your proposed amendment you are dealing with a new court. You are virtually creating a new court with jurisdiction to $5,000. You are dealing with a new municipal court with the jurisdiction extended to $1,000, and what do you do concerning appeals from the Appellate Term? You take away the right of the Appellate Term to give us permission to go to the Appellate Division. You send us up to the Appellate Division to get leave from them to

enter their court. Now, under this system, injustice will be done, because of the increased difficulty to secure a grant of leave from the Appellate Division. I have before me the report of a case which I myself tried and was interested in. I succeeded in the court below. The defeated litigant appealed to the Appellate Term. Three of the best judges of the Supreme Court sat on that case, Judges Shearn, Guy and Pendleton. Judge Shearn wrote a splendid prevailing opinion. Judge Pendleton wrote a strong dissenting opinion. I made application to the Appellate Term for leave to go to the Appellate Division. My motion was denied with $10 costs and I paid the $10 and went to the Appellate Division and begged them for leave to appeal to their court. A week later the motion was denied with $10 costs.

Mr. Wickersham — You had two chances.

Mr. Burkan — I had two unlucky chances. Now, with all due deference and all due respect to the Judiciary Committee I say they are making a mistake in opposing my amendment. I admire the splendid work of the members of the committee, and I pay tribute to the excellent work of the committee and in anything I say I am not trying to disparage to the slightest extent anything they have done; I am simply trying to remedy an evil. If you are going to create a new court, a city court, with a jurisdiction of $5,000, a court which most of the people of the city of New York would go to to redress their grievances, and as I understand it, the purpose of increasing the jurisdiction of the city court to $5,000 is to remove cases from the Supreme Court which could be disposed of in the inferior court, will you succeed unless my amendment carries? Is there any intelligent lawyer in this Convention, or in the city of New York that would bring any case in the City Court if he knows that he cannot go to the Appellate Division from a decision of the Appellate Term unless the Appellate Division grants leave? We know that power of the Appellate Division is rarely exercised. We know the Appellate Division, in consequence of its heavy business, is bound to adopt a policy for discouraging the practice of going there from the Appellate Term, and as a result in but very few cases will leave be granted. In this new city court there will be questions involving the construction of the city charter, there will be questions involving the statutes of the city and questions involving the Constitution of the State. They will be important cases, and it seems to me we ought to have the same right as those who will practice in that court, the same right to go to the Appellate Division upon these questions and regard it as our Court of Appeals, in the same manner and to the same extent as litigants in the Supreme Court. I have listened with great attention, with rapt attention and care, to what

has been said by the opponents to my amendment because I wanted to be convinced. I don't want to appear as arguing against everybody. I listened to Mr. Marshall and I thought over what he said and then I recalled the rights you accord to a litigant defeated in the Appellate Division. You say in your amendment that the defeated party in the Appellate Division as a matter of right may appeal to the Court of Appeals from a judgment or order entered upon the decision of an Appellate Division of the Supreme Court which finally determines an action or special proceeding where it directly involved the construction of the State or of the United States or where one or more of the justices who heard the case dissents from the decision of the court, or where the judgment of the trial court is reversed or modified. All I am asking for actions brought in the City Court is the same relief. Why ought not a case in the City Court of the city of New York enjoy the same right of appeal? My amendment does not give leave as a matter of right to appeal from the Appellate Term in the case of a Municipal Court action. That court is final. But in the case of an action brought in the City Court, involving a constitutional question, or where there is a dissent, we demand some right to go to the Appellate Division from an adverse determination of the Appellate Term.

Mr. Marshall — Why do you stop with one appeal in a case which originates in the municipal court? Why do you not apply the same rule to that court?

Mr. Burkan — Because I have listened and I want to give a little leeway. I don't want to appear as being a hog and trying to take everything. I want to listen to reason. I want to discuss this matter so as to protect all litigants in the new City Court. If you want to make the City Court a useful court, and if you want the people of the city of New York to go into that court, if you want to relieve the Supreme Court from a heavy burden you have got to give us the right to go to the Appellate Division, from adverse decisions of the Appellate Term, to the same extent as you accord to defeated litigants in the Appellate Division, because I for one, and many like me, would not bring any case in the City Court if this Appellate Term is to be the court of last resort. Do you get the same kind of judges in the appellate term that you get in the appellate division and the Court of Appeals? I am not speaking disparagingly of the judges of the appellate term. Some of them are excellent men. I have the greatest respect and admiration for them. But they would be men taken from the trial parts and the special terms, some qualified, some equipped and others perhaps not fitted for appellate work by inclination or temperament I do not think we ought to

be deprived of the right which you grant to a man who brings his action in the Supreme Court to have a high tribunal have its last say regarding his controversy. And I want to say this, that as against the average man in the city of New York a $5,000 judgment would be enough to swallow and swamp him. He is not interested in the question of cost and expense of meting out justice. He wants his day in court, and he should have it, upon the same basis as is accorded to any other litigant who selects another tribunal having concurrent jurisdiction. If you send the man out of the court, defeated in the Appellate Term without further right of appeal in the instances I have cited you do an injustice. There are five judges sitting there, and there are two dissents, two strong dissents, and if that man cannot go to the Appellate Division and cannot have his question more evenly settled, that man is discontented, and he feels there is something wrong with the system. That is the reason you are allowing an appeal to the Court of Appeals from the Appellate Division in Supreme Court actions. I went to the library yesterday or the day before and I find that in many cases where the Court of Appeals reversed the decision of the Appellate Division there was a dissent in the court below. You gentlemen can look up the records. Take the advance sheets this year and you will find in most of the instances of reversals by the Court of Appeals there has been a dissent in the court below. Now I feel that in making this fight I am making a righteous fight, I think we ought to have the same right to go to the Appellate Division from adverse decisions of the Appellate Term subject to the limitations in my amendment and make that our Court of Appeals as the Court of Appeals is made the court of last resort in Supreme Court actions.

Mr. Leggett — Mr. Chairman, may I ask Mr. Burkan, under your amendment would cases going up to the Appellate Division, would their decision be final?

Mr. Burkan — Yes, sir; absolutely final. We can only go to the Appellate Division, no more. We are not asking for any more.

Mr. Marshall — Mr. Chairman, may I ask Mr. Burkan, would the decision be final? Would not the Court of Appeals be appealed to?

Mr. Burkan — No, sir.

Mr. Marshall — Why certainly it would. It is done over and over again.

Mr. Burkan — When the Appellate Division gives leave to go the Court of Appeals you have to stipulate for judgment absolute. Of course they can in any case allow an appeal to the Court of Appeals. But I am willing that you should insert any kind of restriction or limitation in this Constitution, put in anything you

like to make the judgment of the Appellate Division absolute and final. I am not asking one whit more than you are giving to a litigant in the Supreme Court. If you want to make this new City Court effective and efficient — and if you do not give us what we ask you will have this situation in the City Court; the average verdict is $750; these cases will now go to the Municipal Court because of the increase in the court's jurisdiction; you will have ten courts in the city of New York with no work on their hands unless you assure the litigants the same privileges as a litigant who brings his action in the Supreme Court. Mr. Chairman you have one glaring inconsistency in respect to this right of appeal. When I bring action against a man in the Supreme Court that man under certain restrictions may go to the Court of Appeals, from an adverse decision of the Appellate Division, but if the same litigant brings his action in the City Court he goes to the Appellate Term as a court of final and last resort. Now I have heard of costs and the expense of the law and the law's delays. Why, from Shakespeare's time we have heard of the law's delay. We are going to have it in the city of New York right along. You are litigating the world's business in New York. There is foreign as well as domestic litigation there. Your business is going to increase and we have got to be up to the times. We have got to assure litigants the same chance and assure them that they will get their day in court and the case be tried and heard in the lower as well as Appellate Courts as you assure any class of litigants. You are not going to satisfy any man in New York that he has only a right of one appeal. You cannot explain it to the people. I for one don't know how. I have got to say frankly and fairly that there is discrimination against those litigants who bring their action in the City Court.

Mr. Leggett — I won't attempt to go into this difficulty of New York city courts, but to express my entire agreement with the committee in their endeavor as far as may be to limit appeals to one review and unless that is going to be the effect of Mr. Burkan's amendment I should be opposed to it. I think that that is important not only from the viewpoint of the State itself but also from the viewpoint of half of the litigants. We have heard a great deal to-day about the rights of the appellant to go on and on, and on, but who has said anything about the rights of the respondent, who, after a case has been once decided in his favor he should not at least come somewhere in sight of an end of the litigation.

Mr. Donnelly — May I say this, Mr. Chairman, there is a distinction between Mr. Burkan's amendment and the amendment which I proposed here this morning and which is now adopted by the committee. When you have this one right of appeal which Mr.

Marshall impressed upon the committee so much, and there is reversal and new findings of fact are made, then you are through; but if there is a mere reversal you get a new trial and a new right of appeal from the decision upon the new trial. That is what I have sought to impress upon the committee. I do not mean to specifically dissent from Mr. Burkan's proposition, but I have sought to impress upon the committee that there should be the right to go to the Appellate Division and have final determination as to whether the decision of the Trial Court should be adopted, or the decision of the Appellate Term, and there is a complete distinction between that and the case of an affirmance with one dissenting opinion. There you have two courts agreeing upon the facts and so while I am not against the views of Mr. Burkan as to an extra right of appeal, I want to point out that distinction between the committee's amendment and Mr. Burkan's amendment.

Mr. Griffin — One thing that impressed me with respect to the theory of the Judiciary Committee in limiting the right of appeal is this: They seem to have the idea that there is something essentially wrong and against public policy in allowing appeals. They seem to think that it is only the right of the litigant that is involved. Now, I venture the suggestion with all humility that there are other rights greater and of more moment than the interest of the individual in any case that comes before our courts. There is the abstract right of justice and if a question of law is involved in a case, be it ever so humble as to amount or ever so humble as to character and standing of the litigants, I believe that question is entitled to be litigated through the Appellate Division and to the Court of Appeals if necessary. All that we should ask, all that we should demand, is whether or not there is a question of law of sufficient importance to be adjudicated.

Mr. Griffin — In appeals from the Appellate Division to the Court of Appeals, inquiry is made as to whether the determination of the Appellate Court involves a question of law, adjudication of a question of constitutional law. If it comes within limitations you are entitled to appeal as a matter of right. Now, this is all, as I understand it, Mr. Burkan's amendment requires, that where a question of law is involved in the determination of the Appellate term that you may then go, under certain limitations to the Appellate Division. There is another side to their question: The Committee have seen fit to enlarge the jurisdiction of the City Court to $5,000. Now, if lawyers deliberate for a moment as to where they are going to begin their action, do you suppose that any lawyer will be so foolish as to begin an action in the City Court when he can begin it in the Supreme Court and retain all

the rights and privileges of appeal? Why do you enlarge the jurisdiction of the City Court? To extend an invitation to litigants to go there instead of crowding the Supreme Court. You open the door and then close it in their faces. They will not go in there. They will say that is a blind alley. If we go in there we can go no further.

The Chairman — The question now is upon the amendments offered to Section 3. The first amendment is that by Mr. Buxbaum. The Clerk will read the amendment.

The Secretary — By Mr. Buxbaum. On page 6, line 18, before the words " shall be necessary " insert the words " of the justices sitting."

The Chairman — The question is on the amendment. Those in favor will say Aye, opposed No. The amendment is adopted.

The next is the amendment offered by General Wickersham. The Clerk will read.

The Secretary — Page 6, line 24, strike out the word " or "; page 6, line 25, after the word " peace " add " city magistrates courts and courts of special sessions held by one magistrate only."

Mr. Wickersham — One city magistrate only. There must be a mistake in the copy.

The Secretary — I will read it again. Page 6, line 25, after the word " peace " add " city magistrate's courts and courts of special sessions held by one city magistrate only."

The Chairman — The question is on the adoption of the amendment?

Mr. Winslow — May I ask a question of the chairman of the Judiciary Committee regarding the Proposed Amendment? Do I understand, General Wickersham, that that word which is now added, " city ", before " magistrate ", is that the result of the deliberate thought of the Committee?

Mr. Wickersham — It is to conform with the provisions of the present inferior courts act.

Mr. Winslow — The reason I raise the question is this: That in the courts of special sessions, in the ninth judicial district, or, speaking specifically, in the County of Westchester, where we have courts of special sessions in the cities of New Rochelle, Mount Vernon and Yonkers, the court is presided over by one magistrate. He is not at all a city magistrate. He is a city judge. Without the word " city " there, the amendment now suggested by the Judiciary Committee would apply to appeals from those courts of special sessions, and in that event, the statute which now provides for appeal to the county court would continue to apply. By the insertion of the word " city ", it might be a question as to whether or not that would not apply to the courts of special sessions in

cities. I merely ask as to whether that question has been considered by the Judiciary Committee?

Mr. Wickersham — Mr. Chairman, this amendment was suggested by one of the judges of the Court of General Sessions who pointed out to me that under the new inferior courts act, magistrates, city magistrates in the city of New York, were empowered to hold special sessions courts for the consideration of certain minor offenses. And in order that they might not be comprehended under the general description of special sessions courts, so that appeals from them should go to the appellate term, I suggested this amendment so as to exclude from the devolution of the jurisdiction of the appellate term the judgments of city magistrates and the courts of special sessions held by one city magistrate only; in other respects, leaving jurisdiction of appeal from courts of special sessions just as they at present are.

The Secretary — On page 6, line 25, strike out the word "excepts," and insert in place thereof "except." On page 7, line 3, strike out the words "order of."

The Chairman — The question is upon the adoption of the amendments as just read. Those in favor will signify by saying Aye; those opposed No. The amendments are adopted. Next are the amendments offered by Mr. Burkan.

The Secretary — By Mr. Burkan: Page 6, line 26, after the word "term" insert "on appeals from judgments of conviction in criminal cases."

Mr. Burkan — I withdraw that. There is still another one.

The Secretary — By Mr. Burkan: Page 7, line 4, after the word "division" add a new section to read as follows: "Section four. Appeals may be taken as of right from any appellate term to the proper appellate division: (a) Where one or more of the justices who heard the case dissents from the decision of the court; (b) from a judgment or order entered upon the decision of any appellate term of the Supreme Court which finally determine an action or special proceeding commenced in the city court of the city of New York is directly involved a construction of the Constitution of the State, or of the United States, the statutes of the State, any charter of the city of New York, but the jurisdiction of the appellate division in such cases shall be limited to the review of questions of law; (c) from any order granting a new trial in an action commenced in the city court of the city of New York, where the appellant stipulated that upon affirmance judgment absolute shall be rendered against him; (d) from an order or judgment of the appellate term reversing or modifying a judgment of the trial court in an action commenced in the city court of the city of New York.

The Chairman — The question is upon the adoption of the amendment as just read.

Mr. Burkman — I call for a division.

The Chairman — A rising vote. Those in favor of the adoption of the amendments will please rise. The gentlemen may be seated. Those who are opposed will please rise. The Secretary will announce the vote.

The Secretary — Ayes, 35; noes, 39. It is lost.

The Chairman — Now the question is upon the adoption of the amendments offered by General Wickersham. The Secretary will read.

The Secretary — By Mr. Wickersham. Page 7, line 3, after the words " may be ", insert the following: " taken as of right to the appellate division only where the appellate term on reversing or modifying a judgment makes new findings of fact and renders judgment thereon appeals to the appellate division also may be ". Strike out in line 3, the words " only by order of."

The Chairman — " Order of " has already been eliminated. The question is upon the amendment as just read. Those in favor of the adoption will signify by saying Aye, those opposed No. The amendment is adopted. The question now occurs upon the adoption of section three. Those in favor of the adoption of section three will signify by saying Aye, those opposed No. Section three is adopted. The clerk will proceed to the reading of section four.

The Secretary — Section four. No judge or justice shall sit in the appellate division or in the Court of Appeals in review of a decision made by him or by any court of which he was at the time a sitting member. The testimony in equity cases shall be taken in like manner as in cases at law; and, except as herein otherwise provided, the Legislature shall have the same power to alter and regulate the jurisdiction and proceedings in law and in equity that it has heretofore exercised.

Mr. Wickersham — Mr. Chairman, there is no change in that from the present law.

Mr. Griffin — I would suggest a change, with all due respect. I would have this clause apply to judges of the appellate term, so as to have the section read, " No judge or justice shall sit in the appellate division, the appellate term, or in the court of appeals ".

Mr. Wickersham — No objection, Mr. Chairman. I suggest that it be inserted before the words " appellate division ".

The Chairman — Page 7, line 5, after the word " the ", insert the words " appellate term ". Is that right?

Mr. Griffin — That is correct.

Mr. Wickersham — I accept that amendment, sir.

The Chairman — The question is upon the amendment as offered by Senator Griffin. Those voting in the affirmative will signify by saying Aye, opposed No. The amendment is adopted. The question occurs upon the adoption of Section 4. Those in favor of its adoption will signify by saying Aye, opposed No. The section is adopted.

The Clerk will read Section 5.

The Secretary — Section 5. The official terms of the justices of the Supreme Court shall be fourteen years from and including the first day of January next after their election. When a vacancy shall occur otherwise than by expiration of term in the office of justice of the Supreme Court the same shall be filled for a full term, at the next general election, happening not less than three months after such vacancy occurs; and, until the vacancy shall be so filled, the Governor by and with the advice and consent of the Senate, if the Senate shall be in session, or if not in session the Governor, may fill such vacancy by appointment, which shall continue until and including the last day of December next after the election at which the vacancy shall be filled.

Mr. Wickersham — That is unchanged, Mr. Chairman.

Mr. Austin — There is one word in this which I would like to see changed, because it offends me a bit. I maintain that any incident which recurs with the distinct regularity of the first Tuesday after the first Monday in November does not "happen." It occurs. I therefore move to strike out the words "happening" in line 18 of page 7 and insert in place thereof "occurring".

Mr. Wickersham — I have no objection.

Mr. Marshall — Mr. Chairman, the gentleman would be guilty of tautology, because it would then be "at the next general election, occurring not less than three months after such vacancy occurs". The word "happening" is a very proper word in that connection.

Mr. Austin — I don't care about that, but I maintain a general election does not "happen." It occurs.

Mr. Wickersham — May I call Mr. Austin's attention to the fact that it is the vacancy that happens.

Mr. Austin — I don't wish to press it, Mr. Chairman.

The Chairman — The amendment is withdrawn. The question occurs upon the adoption of Section 5. Those in favor of its adoption will signify by saying Aye, those opposed No. The section is adopted. The Clerk will read Section 6.

The Secretary — Section 6. To secure a more simple, speedy and effective administration of justice, it shall be the duty of the Legislature to act with all convenient speed upon the report of the Board of Statutory Consolidation transmitted to the Legisla-

ture by the Governor on the twenty-first day of April, one thousand nine hundred and fifteen, and to enact a brief and simple civil practice act and to adopt a separate body of civil practice rules for the regulation of procedure in the Court of Appeals, Supreme Court and county courts. The Legislature may make the civil practice rules or any part thereof applicable to such other courts as it may provide. Thereafter, from time to time, at intervals of not less than five years, the Legislature may appoint a commission to consider and report what changes, if any, there should be in the law and rules governing civil procedure. The Legislature shall act on the report of each such commission by a single bill, and the Legislature shall not otherwise, or at any other time, enact any law prescribing, regulating or changing the civil procedure in the Court of Appeals, Supreme Court or county courts, unless the judges or justices empowered to make and amend civil practice rules shall certify that legislation is necessary. After the adoption of the civil practice rules by the Legislature under the requirements of the first paragraph of this section, the power to alter and amend such rules and to make, alter and amend civil practice rules shall vest and remain in the courts of the State to be exercised by the judges of the Court of Appeals and the justices of the Appellate Divisions of the Supreme Court, or by such judges or justices of the Court of Appeals, the Supreme Court and the county courts as the Legislature shall provide.

Mr. Sears — It is hardly necessary in a body consisting of as many lawyers and persons who are versed in law as there are in this Convention to point out the difficulties and evils that have resulted from the technical, complex and inflexible practice that now obtains in the courts of civil procedure. These difficulties and evils have been so well recognized that they have not only attracted the attention of lawyers and bar associations, but have been incorporated in platforms of the great political parties. Thus, the Democratic platform of 1912 contained the following: "The need of reform in the administration of civil and criminal law is urgent and we recommend the enactment of such legislation as will rid the present legal system of the delays, unnecessary expense and uncertainties incident to the present procedure." A similar plank occurs, I am informed, in the platform of last year.

In the Republican platform adopted at the Saratoga Convention, the following occurs: "We favor a thorough reform of judicial procedure. We believe that the delays and expense incident to the administration of justice should and can be materially reduced. They arise to a great degree from the mass and complication of detailed statutory rules of procedure imposed upon the courts by legislative enactment. Legislation in regard to

judicial procedure should be confined to a short and simple practice act, and the power to devise, amend, or abrogate rules of procedure should be delegated to the courts to be adopted or modified by them from time to time as experience dictates, controlled only by fundamental laws." Thus, the New York State Bar Association, by its committee headed by Judge Cullen, a committee of about fifteen members, made the following recommendation in relation to the work of this Convention, saying: "The Legislature should be directed to enact a short practice act approved by a majority of the judges of the Court of Appeals and of the justices of the Appellate Divisions, such act not to be thereafter amended except upon approval by a majority of the said judges and justices; the said judges and justices to have power to make or alter necessary procedural rules of court not inconsistent with the provisions of said practice act." The Committee of the Association of the Bar of the City of New York, of which Mr. Guthrie was the chairman, made the following recommendations to this Convention: "Your committee recommends that the Constitution vest in the Convention of Justices of the Supreme Court assigned to the Appellate Division full power to establish rules of practice which shall not be subject to amendment or abrogation by the Legislature. The Judiciary Law now provides that this Convention shall establish rules of practice which shall be binding upon all the courts of the State and all the judges and justices thereof, except the court for the trial of impeachments and the Court of Appeals, but such rules must not be inconsistent with the provisions of the code of civil procedure. Hence, the Legislature has the power to change or nullify the general rules of practice, and it is constantly doing so by amendments to the Code, frequently to meet some particular contingency not of general public concern. This often introduces confusion and complexity. Hundreds of sections of the present Code embody or amend rules of practice and have no proper place therein. Since the adoption of the Constitution of 1894, nearly 1,600 sections of the Code have been amended." On principle, it seems to your committee to be beyond question that authority to make and amend the general rules of practice should be vested in the Supreme Court, as the court of general original jurisdiction at law and in equity. The justices are daily dealing with the subject in all its aspects and they are clearly better qualified by technical knowledge and practical experience to formulate general rules of practice than a legislative body. The responsibility for the effective and satisfactory administration of justice is primarily cast upon these justices, and they can be safely entrusted with the power of adopting and enforcing such rules as are necessary for the due performance of their duties.

"In the judgment of your committee, the constitutional provision can be worded so as not to infringe upon the power of the legislative department to pass laws affecting the jurisdiction of the courts or relating to substantive law or personal or property rights. The convention of justices should have power also to direct and regulate the publication of all official reports of decisions." In addition to these recommendations, there appeared before your committee a large number of judges and lawyers, and practically all recommended that there be adopted by the Constitutional Convention some provision for the enactment of a short practice act, supplemented by flexible rules of court. We had before us the report of the Board of Statutory Consolidation on the simplification of the civil practice and of the proposed practice act and practice rules therein contained. This Commission, as is known by the members of the Convention, consists of Judge Rodenbeck, Mr. Milburn, Mr. Moot, and Professor Collin, and much study has been devoted by this Commission to the subject and they have produced and recommended to the Legislature for enactment a practice act which consists of 71 sections and practice rules consisting of about 400 sections. Now, in explanation of the division between the practice act and the practice rules, this Commission makes the following statement: "The plan herein proposed is not that of the English system under which so much of the details of practice is left to the decisions of the courts, but one under which the ground work or fundamentals of procedure are defined by the legislature and the superstructure or details are regulated by stated written rules of court binding upon the courts and litigants alike, but modifiable in the interest of justice whenever necessary." And in their notes they further give a statement of a great number of reasons why they deem it advisable to divide the provisions in relation to practice in this manner, and, in respect to the rules, they say, among other things: "The preparation of rules regulating the details of practice by the courts instead of by the legislature will place this work in the hands of experts who are daily called upon to apply the rules. The judges may not actually draw the first set of rules but they will act upon them before the rules go into force and they will receive more careful and more skillful attention than statutes regulating details of practice receive in the legislature."

And, further, they say: "The preparation of rules of practice by the courts will result in making the rules more general in character. The judges will endeavor by their rules to relieve procedure of technical questions of practice which do not affect the substantive rights of the parties." "The regulation of the practice by rules of court will obviate the evil of amendment to meet

individual cases." "Court rules regulating details of practice would give the courts greater freedom in the administration of justice than inflexible statutory rules permit."

Such, then, were the reasons which, among other things, induced the commissioners to submit to the Legislature their proposed practice act and their proposed rules of court. Your committee has not had sufficient time to recommend for adoption this particular plan. It will be given searching examination by the Bar and by the citizens before the next meeting of the Legislature. What your committee has done in this section is to call the attention of the Legislature to the proposal of this Board of Statutory Revision, and to require them to act thereon. And in this subdivision we indicated that some such short practice act, not necessarily this short practice act, but either this act, amended or not, or some other act of similar import, shall be enacted by the Legislature with all convenient speed. The practice act contains the fundamentals and embodies the procedural rights, and the details for the carrying out of the practice are to be placed in the rules. Now, while we recommend that the practice act shall be enacted with all convenient speed, your committee also recommends in this section that the Legislature shall at the same time adopt the practice rules and we would then have a working system, a flexible system. If this act is adopted, we will have a system whereby practice rules shall be enforced, not like the rule of the Medes and the Persians, but that they shall be given a reasonable interpretation and that error shall not lie through non-compliance with the same, for the eighth section of the practice act provides as follows: "Non-compliance with any of the civil practice rules or with any rule of practice for the time being in force, shall not render any proceedings void unless the court or a judge shall so direct, but such proceedings may be set aside, either wholly or in part, as irregular, or amended or otherwise dealt with in such manner and upon such terms as the court or judge shall think fit." Now, when the Legislature shall have adopted this system, consisting of the practice act and the practice rules, the amendment of the practice rules will be confided to the judges, either the judges of the appellate divisions of the supreme court and the judges of the court of appeals or such other judges of the supreme court, the court of appeals and the county courts as the Legislature shall have provided. And they, as technical experts, will know where it is necessary to amend those rules. The practice act, which will be a statute of the State of New York, will only be amended upon the recommendation of these same judges, except that, at intervals of not less than five years, a commission will be appointed to revise the whole scheme, that is, both the practice act and the practice

rules. We believe that this is a workable system, that it will give flexibility to the civil practice, that it will avoid the delays and the duplication of work which are involved in the present technical and inflexible procedure, and we heartily recommend this section for your consideration and approval.

Mr. Clinton — Will the gentlemen permit me to ask him two questions? In this section at the beginning it reads: "To secure a more simple, speedy and effective administration of justice it shall be the duty of the Legislature to act with all convenient speed upon the report of the board of statutory consolidation transmitted to the Legislature by the Governor on the twenty-first day of April, one thousand nine hundred and fifteen," and it then proceeds to leave the Legislature with full power to enact any such practice act as it pleases. Now the inference to be drawn from that by the Legislature is, to my mind, plain, and that is that it amounts to a recommendation of the practice act which has already been prepared. That is not the intention of the committee, as I understand it.

Mr. Sears — No, Mr. Clinton, that is not the intention of the committee. The intention of the committee is to call this matter to the attention of the Legislature, so that they will act thereon one way or the other; but if they act adversely, then they must proceed to enact another short practice act.

Mr. Clinton — Then I understand it is not to be taken in any sense as an inferential recommendation of the short practice act in accord with that particular report?

Mr. Sears — You are quite right. That is the intention of the committee.

Mr. Clinton — The other question which suggests itself to my mind is perhaps not of very much importance. After providing for the adoption of a practice act, including practice rules, and turning over the power of amendment and change to the courts, you say, line 23: "to be exercised by the judges of the court of appeals and the justices of the appellate division of the supreme court, or by such judges or justices of the court of appeals, the supreme court and the county courts as the Legislature shall provide." Now may I ask how you construe that? Do you construe it as giving to the judges of the Court of Appeals and the justices of the Appellate Divisions of the Supreme Court jurisdiction in the absence of any legislation?

Mr. Sears — Exactly, in the absence of legislation appointing some other body of judges.

Mr. Clinton — Is that language entirely clear on that? I take it, that was the intent. It reads: "or by such judges or justices of the court of appeals, the supreme court and the county courts

as the Legislature shall provide." The connection would seem to be subject to the possible construction that the Legislature must pass an act in order to confer jurisdiction upon the courts at all.

Mr. Sears — In other words, Mr. Clinton, you think that the sentence might possibly be construed by making the words "as the Legislature shall provide" relates to the former as well as to the latter part of the sentence?

Mr. Clinton — Yes.

Mr. Sears — That was not the intention of the committee, and we thought when we drew this article that it was clear that this power should be exercised by the judges of the Court of Appeals and the justices of the Appellate Divisions of the Supreme Court, in any event, unless it was changed by a legislative enactment giving the power to other judges.

Mr. Clinton — Does it not seem to you that the language is not quite clear? If it read "or if the legislature shall so provide" — the other language would have to be changed somewhat.

Mr. Sears — Yes, it would require a rearrangement of the sentence. Personally, I think it is perfectly clear, and with this explanation in answer to your question, I should think that there would be no question as to the construction by the courts.

Mr. Clinton — But I have heard it stated in this Convention, and I may be in the same condition of mind, that the question is so confused that I do not understand it — I am not going to offer an amendment but I at least want it to get on the record, if the question does come up, what the intention is, so as to aid the courts in the construction of it.

Mr. Leggett — Suppose the Legislature does not take any action as it might under the last two lines there, and the power is to be exercised, as stated, by the judges of the Court of Appeals and by the justices of the Appellate Divisions of the Supreme Court. Does the committee contemplate that that shall be in accordance with the present way of making rules, that is to say, that the judges of the Court of Appeals shall make rules for the practice in the Court of Appeals and the justices of the Appellate Divisions make general rules of practice in the Supreme Court, or do they all act together?

Mr. Sears — The idea of the committee was that the rules for the practice in the Court of Appeals and in the Supreme Court should all be embodied in the same body of rules, and that these judges of the Court of Appeals and of the Appellate Divisions should all act together, for lack of a better word, as a convention of judges to recommend to the Legislature changes in the practice act, or, themselves, to change and amend the rules of practice.

Mr. Leggett — Well, did the committee think that the language

employed here was clear enough to point that out, in view of the opposite practice that has prevailed heretofore?

Mr. Sears — We did think so.

Mr. Leggett — Now, another question. What was the reason operating upon the Committee for providing that the Legislature, after having enacted a brief and simple practice act, should also adopt a body of rules and provide further that immediately after the adoption of those rules the judges of the court might alter or amend them? Why not leave it to the judges of the court to make that body of rules originally, in view of the very patent fact, if this Constitution goes through, that the Legislature is going to have all the work it can do, and then some?

Mr. Sears — In answer to that, I would say that the matter of rules will be subject to investigation and to recommendation at the same time that the matter of the practice act will be subject to recommendation and to suggestion. The two will be before the people together. Now, it was the recommendation of the Board of Statutory Revision that this practice should be followed and it seemed to us to be thoroughly desirable that the Legislature should enact rules in the first instance and should have the right, when the commission is appointed, which is permissibly provided for at intervals of not less than five years, to then revise the practice rules again, if desirable, but in the interval the amendment or change of those rules should be in the hands of the judges.

Mr. Stimson — Relating to the question that Mr. Leggett asked, was it not thought that the same commission, having prepared a body of rules which laid the foundation for any action which the Legislature might take, would place the Legislature in a position to make their work very much more simple than if the ground had not been broken in that way?

Mr. Sears — Certainly, that is true, and it would be very difficult to enact a practice act unless at the same time the rules were enacted. The practice act would hang in the air without any foundation, or, to change the similie, there would be a foundation and no superstructure.

Mr. Quigg — I should like to ask a question, if I am not interrupting about the last paragraph where you say that the Legislature, having acted on the report of such commission, shall not enact any law unless the judges say that the law is necessary. Then you seem to go on and say that they, themselves, may make the law.

Mr. Sears — Answering the question of Mr. Quigg, I would say that the judges have power to alter the rules but they have no power to alter the short practice act. That can be altered in two ways only; by the Legislature, upon the recommendation of

the judges; and by the Legislature, after a commission has acted, if a commisison is appointed as permitted in this provision.

Mr. Austin — I confess that I am a little befogged, Mr. Sears, about the right to amend these rules. I understood you to say that it was the intention of the Committee that, after this legislative investigation which might occur not oftener than every five years, the Legislature may amend both the practice act and the rules.

Mr. Sears — Yes, that is, the first rules are to be adopted by the Legislature. Then the rules may be amended by the judges until this commission is appointed, and then, when the commission is appointed the Legislature may revise both the practice act and the rules.

Mr. Austin — In other words, the Legislature first adopts them, and then, for at least five years, amendment can only be made by the judges.

Mr. Sears — Amendment to the rules.

Mr. Austin — Yes, to the rules. Then a commission may be appointed and the Legislature, after the report of that commission, may amend; then, the Legislature having amended them, for the next five years the judges amend.

Mr. Sears — That is the scheme.

Mr. Austin — Isn't that a slightly complicated scheme?

Mr. Sears — We think not.

Mr. Austin — I can well understand the reason for requiring the Legislature to adopt these rules in the first instance, on account of the report which has been made, but, having been made, if the courts are best qualified to change the rules, should not exclusive power to amend be left in their hands? As a matter of fact, isn't it exclusively left in their hands anyway because, as soon as the Legislature does change the rules, each five-year period, the court may immediately undo what the Legislature has done?

Mr. Sears — Mr. Chairman, when the Commission is appointed and there is a revision of the practice act, which is the foundation, as dependent upon them, there will probably be a necessary change in the superstructure, which is the rules. So, when the Commission has reported, it will look into both the practice act and the rules. For that reason we think that, in that event, the Legislature should have the power to change not only the practice act, but also the rules. At other times, the whole structure being erected and only alterations to be made in it, we can safely leave that to the judges of the courts who are experts and know best what changes are necessary to be made.

Mr. Austin — I comprehend the scheme for making alterations. Now, may I ask another question, Mr. Chairman? In lines 7 and

8 you provide that "the Legislature may make the civil practice rules or any part thereof applicable to such other courts as it may provide." Now, I find that there is a provision in section 7, at the end of the section in relation to the Court of Claims, that the court may establish rules to govern its own procedure. Are not those provisions contradictory?

Mr. Sears — I think not, because, if the Legislature made the rules applicable, why that would fulfill the mandate of the Constitution.

Mr. Austin — Yes, but on the other hand, the Court of Claims might make rules that would be contrary to the expressed provision in the other section that the Legislature might make them applicable to the Court of Claims.

Mr. Sears —Mr. Chairman, we intended that the Court of Claims should have power, inherent power, to make its own rules, that is, rules for its own court, and probably that would be an exception to this general power.

Mr. Austin — Then, should it not be provided?

Mr. Sears — It might be. I don't know if it is necessary.

Mr. Austin — If I can ask one more question, I won't ask any more, Mr. Chairman. On line 14, page 8, may I ask what is intended by "or at any other time". It says, "The Legislature shall act upon the report of such Commission by a single bill and the Legislature shall not otherwise or at any other time". Now, does that mean that the Commission must report to the Legislature which appoints it, and if that Legislature fails to act, that no other Legislature can act upon that report?

Mr. Sears — Mr. Chairman, we did not have any such intention in that respect; that when the report of the Commission is made thereafter the report and recommendation can be acted upon and the rules and practice act can be revised, but that must be done in a single bill.

Mr. Austin — It having been done once, it cannot be done by any succeeding Legislature.

Mr. Sears — That is the end of it. That is the end of it until another commission is appointed and the same procedure is gone through.

Mr. Sargent — On page 8 the Legislature is directed to provide for a brief and simple practice act and a separate body of civil practice rules for the regulation of procedure in the Court of Appeals, Supreme Court and County Court. Now, further in your proposal you provide for the City Court of the City of New York that its jurisdiction be extended all over the city, and you make no provision in that part of your proposal for the enactment of rules or rules of practice. Now, I would like to have the

explanation appear upon the record for the omission here of a provision for the enactment of rules for the guidance of the court.

Mr. Sears — That would come within the ordinary statutory power, that is, the legislative power. The Legislature can proceed in relation to other courts in just the same way as it can now, unless it chooses to make the rules apply. In the City Court Act it is provided that the justices of the court, or a majority of them, may from time to time establish rules of practice for the court not inconsistent with the act, and that the general rules of practice shall be as prescribed by Section 94 of the Judiciary Law, The law regarding the practice in the courts, so far as they are applicable thereto, and if the Legislature chooses, it can extend the practice rules and the practice act to the City Court or any other court.

Mr. Sargent — Will you kind'y explain the meaning of the sentence following: "The Legislature may make the civil practice rules or any part thereof applicable to such other courts as it may provide". Has that any bearing upon this subject?

Mr. Sears — That is what I referred to. This practice act and these practice rules must be applicable to the practices of the Court of Appeals, Supreme Court and county courts. They need not be applicable to other courts unless the Legislature affirmatively so provides.

Mr. Parsons — I would 'ike to ask a question as to the meaning of "provisional remedies"?

Mr. Sears — Provisional remedies are referred to in the practice acts. I take the question to mean as to the recommendation of the Board of Statutory Consolidation. I am not sure that I can tell all about it, but there is a provision of the practice act that provisional remedies shall be granted upon the return of what is called the summons for direction; and then the practice in that respect is clearly defined in the rules. But the provisional remedies are mentioned in the practice act. Now, I am referring, when I say the practice act, to the practice act recommended, proposed practice act recommended by the Board of Statutory Revision or Statutory Consolidation, and not to the practice act which we necessarily recommend. We do not recommend the adoption of this practice act.

Mr. Brackett — Whether it is best to have a short practice act, a short and simple practice act, supplemented by rules of the courts, or whether it is best to have a code of procedure that shall pretty definitely point out the rules and modes of procedure, I am not prepared to decide.

If this section shall be passed, as I suppose it will be, and the Legislature shall act under it, and if the Convention of the judges shall then adopt the practice rules, and if in due time they shall

go into effect, I have no idea that the legal millenium or the practice of Paradise, is going to be here. I was looking around the chamber to see if there is one in the room, except myself, who is old enough to remember back as far as 1875. The Chairman holds up his hand. I know he is old enough. Brother Quigg, judging by the color of his hair ought to remember it, and Brother Leggett and one or two others. Judge Stowell and some others,— I might add that my Brother Leggett, judging by the smoothness of his head, ought to be able to remember. In 1875 when the young legal luminary that now stands before you, not young, first burst upon the enraptured vision of the Bar of Elmira, we were practicing under a Code of Procedure which I think consisted of three hundred and ninety odd sections.

Mr. Marshall — Three hundred and ninety-nine.

Mr. Brackett — Three hundred and ninety-nine sections. When the Code of Civil Procedure in 1877 became effective, it was passed, I think, in 1876,— Brother Marshall is displaying a good deal of minute knowledge here which indicates that he is old enough to remember,— when that civil code of procedure was passed, it was then believed that the very highest and very best in practice had been obtained. The trouble up to that time had been that we had to go through the statutes. We had then Edmund's statutes at large; we had to go through this code of 399 sections; and we had to go through the sections of a good many detached acts in order to know what the law was. And I remember the expressions of extreme satisfaction of those members of the Bar who favored a code as distinguished from those who were still hugging for dear life the common law practice to their bosom; I remember the extreme satisfaction there was on the part of those members of the Bar who said that now they only had to buy one book, and they only had to keep one book on their desks in order to have all the rules of practice before them. And who said that really and truly they had entered upon a period when the practice was greatly simplified, and, therefore, was very much easier and better. And in telling this, Mr. Chairman, I am only doing as that old legal hero, Martin I. Townsend of Troy, did, when he told about himself when he was sent to Congress and he was assigned to the Revolutionary Committee, and when he was asked why he received that assignment he said: "It was so that when anyone made application for a Revolutionary pension he could tell from personal recollection whether the applicant was entitled to it." I do not believe that the present code is so bad, or that the body of practice acts is so good, as the enthusiasts of this body either way would make it. The practice act that is to be adopted and must of necessity be adopted in case this mandate is put upon the Legislature

by the adoption of this Constitution, is the one that is presented by the Rodenbeck Committee. There will be no other presented. No one else has drawn one. No member of the Legislature and no committee of the Legislature will have time enough to draw one.

So that the question that this body is to decide upon now is whether or not they will substitute the provisions of the so-called Rodenbeck practice rules for the present rules of procedure. I confess to you that it seems to me we are embarking upon the soundest and sureless sea when we do so. I discovered in the course of a somewhat protracted service here in Albany that if there was any body of men in our State, that, as a whole, lacked qualification, or had positive disqualification for drawing legislative bills, or rules of practice, it was the members of our court.

Mr. Wickersham — Does the gentleman think that in case the retired judges of the Court of Appeals are continued as referees under certain conditions, that their work will be the work of novices?

Mr. Brackett — Mr. Chairman, I think it would be the work of those who were skilled in sin. I think the language of the acts as they were presented was not apt, and if we had anybody on earth who would construe the acts except the gentlemen themselves, I think there might have been trouble, which brings up to my mind, the fact that when Judge Potter of Whitehall was re-elected judge and he could only serve three or four years, that, therefore, it was decided, in spite of that fact that he was entitled to the pension. That is something which reminds me of the old fellow in Vermont who prayed that he might be a judge and decide his own case and tax his own cost, and we come pretty near that when you come to the construction of any such provision as that by the court. There may be, of course, and I admit there are,— in the great body of judges there may be men who have some aptitude, or some skill in drawing rules, or in drawing provisions of an act, but I want to tell you that training for the bench does not conduce to any such knowledge. Take what to my mind is one of the best provisions of the Code of Civil Procedure, one that conduces more to bring the mind of the trial court right down to the principles and the points to be decided in a case when it is submitted, and one by means of which the mind of the court can be brought along a logical path to a logical end, and that is the request to find. Do you think the members of the court are going to adopt any provision, or urge any provision which permits the members of the bar to present requests to find in the trial of a case?

Mr. Wickersham — Does not the gentleman think that one of the greatest objections to it was the practice which grew up of

preparing numerous requests to find and seeking to confuse judges by presenting substantially the same question of facts in a number of slightly different ways; was not it the abuse of that very system which led to the abolition of those requests to find?

Mr. Brackett — Mr. Chairman, I cannot tell the gentleman how glad I am that he asked that question, and if, after the session is over, he will come to my desk, I will give him some honorarium for having asked it. I don't think so. I was coming precisely to the state of mind and the sentiment with which the judges treated that question, if you had not asked the question. I was about to approach just that very subject. I believe that the way that the judges of the court whanged and whimpered over that question was utterly disgusting and disgraceful. That is what I think. There is no trouble at all in passing on these requests to find. If there are any requests which do not embrace the ultimate facts, they do not have to find on them. They do not have to pass on them. They simply have to mark them as evidential; that they are not called upon to pass upon them. But for several years and until it was repealed and that abomination known as the short-decision was substituted in its place — and may God forgive me for having been a member of the Legislature that passed that short-decision provision — until that was adopted, for several years there was just one continual whang going up from certain members of the bench.

Mr. Wickersham — Wasn't there not only a whang going up from the bench, but a whang and howl going up from the members of the Bar when that system reached the culmination of its absurdity in the Elevated Railroad cases?

Mr. Brackett — There was a howl going up from many lazy members, both of the bar and of the bench, but there was no howl which went up from the men who were willing to devote their minds to consideration of the acts and the laws in order to comprehend the train of logical requests. There was not any more trouble on the part of the court in controlling them than there is in controlling any member of the Bar who is practicing before the bench, with the exception of the wit, and with the exception of some of the disgusting reprimands which members of the Bar received from the bench.

Mr. Chairman, it is my humble opinion that a single admonition from a court of law is sufficient to control a member of the Bar and a proper admonition of the court with respect to requests to find and an explanation of the fact that only requests as to ultimate facts upon which the case rests and not upon evidentiary facts, is all that is necessary. As I recall the howl then was that because there might be, and there were, large numbers of requests, three or

four hundred requests to find in a case; I submit that there may be cases where three or four hundred requests to find would be absolutely correct and right and further, that three or four hundred requests to find would be of a great deal more relevancy than twenty requests in some other case. I warn the brethren of the Bar that when you come to the practice act, when you come to your convention of judges, making their rules, they will see to it that there is no such burden as requests to find left on the statute books, and they will see to it that there will be many things cut out which they think do not make for their own comfort.

Mr. Marshall — You know, of course, that these provisions contemplated shall be made by the judges of the Court of Appeals and by the judges of the Appellate Division. Would it not facilitate them in the prosecution of their business to have findings of fact, requests for the findings of fact, provided for them, in order that they could simplify their investigations of the cases in fact, would it not, therefore, be a strong indication of error in this part of your argument, at least, which relates to the improbability of a court requiring the requests for findings to be left.

Mr. Brackett — The trouble is that when a judge comes to passing upon or listening to a large number of cases, he does not think so, and when he comes to the decisions of cases and questions, he does not take that view of it. I use that as an illustration. I shall not continue at any great length; I am simply trying to point out what we may expect from the judges of the courts making rules which in effect take the place of the present provisions of the Code of Civil Procedure, and which are, in effect, a practice act in themselves. It may be to a certain limited degree the court should be permitted and it should be its duty to prepare rules, just as rules are prepared now. But I do not believe that the judicial function should be so embarrassed by casting upon it any administrative function in the way of appointment, or any legislative function in the way of making a practice act. Now, Mr. Chairman, in conclusion, because I am not going to discuss this any longer, I only want to call attention to this. This provision in a Constitution means embarking in an entirely new field. I believe you will find in searching the Constitutions all over the country that there is nothing similar to this in any Constitution up to the present time. I have not made the examination, but I think it would be a profitable search to make. It seems to me that we go to the very verge, if not actually beyond the verge of the fantastic, if this provision should be inserted in our Constitution, which is presumed to be and is the basic law and which is presumed to contain only very general principles.

Mr. Marshall — Is it not a fact that the Constitution of 1846

contained provisions requiring a codification of our practice acts and also of the law itself, and is it not true that in response to these demands contained in the Constitution of 1846 that we had our first of Code of Procedure in this State?

Mr. Brackett — Yes, in the most general language.

Mr. Marshall — It was followed by the adoption of the Code of Civil Procedure.

Mr. Brackett — I think in the most general language it did so say, just as this Constitution should say that we should go back to the common-law procedure. If you stop there, you have made ample provision. I was tremendously impressed by the speech of the Chairman of the Republican Convention held at Saratoga in 1914. I cannot help thinking of it ever since, and it gets on my nerves. I cannot get it out of my mind. I have got so I believe every word and letter and syllable of it. In it he said that a Constitution should consist only of the most general terms; that it should not attempt to go into details; that it is the function of the makers of a Constitution to not at all impinge or encroach upon the functions of the Legislature and that it is the function of the Legislature to attend to all details such as these we are considering here.

I hope that the gentleman who thus gave us the words, the golden words, the great fund of wisdom in that convention, is of the same mind now. Finally, brethren, don't think that because you put over this amendment that you are going to create any tribe that will stand apart from the rest of the world. Brother Marshall can give us the history of the tribe of Levi and Aaron, and the other tribes, and I think it was the Levities who were anointed, and I think he would not be guilty of the break made by Brother Byrne. But, I would have the delegates of this Convention get out of their minds that the judges are any more saintly men, or any more annointed men than the average constitutional delegate. There are some of them who are a good deal better than anybody here. There are some who are better and more saintly than some of us here; but don't get it in your minds, brothers, that they are any better, or wiser, or more saintly than all of us here. That is not so. If in your treatment of this subject you will just remember these men as good, straight-forward, honorable, high-minded men, that they are awfully teased at times by those who appear before them, that they average up pretty well, and if you will remember that if you pass this amendment that you cannot expect them to pass at once into the realm of the sanctified, any more than you can expect the transition of the individual members of this Convention into that blissful state, you will have a great deal better conception of my notion of the men who constitute the members

of the bench to-day. There are men, Mr. Chairman, whom it is an honor to look level in the eye, but don't let us get the notion that there is a tremendous distinction between them and the other members of the Bar who try to be high-minded and who try to do their duty.

Mr. Root — I want to say a few words which are stirred up by the appeal to memory by the gentleman from Saratoga. But in the first instance I want to suggest that if the gentleman from Saratoga will not keep out of the record his reference to a break by Brother Byrne, that he change his description of the place from Mount Ararat to Mount Sinai. I remember the conditions which existed prior to the adoption of the Short Civil Procedure Act of 1875, going back a good many years before. I was in the thick of the controversy long before Montgomery Throop charged it in his great tome which was called "The Code of Civil Procedure," and the controversy was between the old common-law practice and the advocates of the reform procedure which went all over the country. That reform was accomplished under the express direction of the Constitution of 1846. I remember that Mr. Stoughton, that able and eminent lawyer, never could speak of the code, when Mr. Field was anywhere about, without calling it "your d——d code, Mr. Field." I remember once being in court in a case in which both Mr. Field and Mr. O'Connor were engaged, and Mr. Field put some question during the argument to Mr. O'Connor as to the effect of the pleadings and O'Connor turned on him and said, "I understand, Mr. Field, that under your code, the plaintiff comes in and tells his story like an old woman, and the defendant comes in and tells his story like another old woman." That was all he could get out of O'Connor on this question of pleading. These were the conditions, and they are continually recurring.

Under the old common law system practice had become so complicated and difficult that it was hard for an honest man to get his rights. There is a good deal of human nature in it. It has been so since the laws of the Medes and Persians were formulated; it has been so since the day of Egypt's power. Wherever a special class of men have been entrusted with the formulation and administration of law, they tend to make it a mystery; they tend to become more and more subtle and refined in their discriminations, until ultimately they have got out of the field where they can be followed up by plain, honest people's minds, and some power must be exerted to bring them back. The Constitution of 1846 exerted that power to bring the practice of the law out of the discredit into which it had fallen because of the intricacy and the complication and the technicality and the subtlety of the old common law prac-

tice. Mr. Field brought it back with the code, of three hundred and odd sections, which bears his name, and the reform in procedure went all over the country. Curiously enough, just about the time that England followed the example and adopted the reformed procedure in her judicature act of 1873, we began to take a back track and Mr. Throop's attempt to condense in a volume which was called the Code of Civil Procedure a great number of particular and minute provisions regarding practice was the first great step in that direction, in the backward direction. Now, in the forty years which have elapsed, we have been following in that same path until the people of our State have come to regard the simplification of practice as one of the great issues of the day. I believe there is no duty which is demanded from this Convention more generally than the duty to do something to make our practice more simple, speedy, inexpensive and effective. Why is it? A careful study of it reveals the cause, or the principle cause. I have listened to discussions and have taken part in them in the Bar Association of my own city, in the State Bar Association, in the American Bar Association, in countless conversations with lawyers and layman, and I say the cause of the prevailing discontent with our practice is to be found in the fact that year by year during all this period of forty years, there has been a continual addition, step by step, statute by statute, to the multitude of definite, certain, precise rules of procedure, binding upon the men that sought redress of wrongs in the courts. One of our most honored and beloved judges in the Court of Appeals said to me the other day, when I asked him how he thought this plan would work, "I have had since I came here to buy fifteen editions of the Code because it is so continually changed that after every session of the Legislature my last edition is useless," and he gave this plan his warm approval. The trouble is not in a particular provision. These provisions that are put in are put in with good intent. The men who propose them in the Legislature are honest men; they believe that they are useful, but they are not the result of any general view of the subject. They are the result of particular views of the needs of particular cases; and a provision that a member of the Assembly or the Senate may well honestly believe to be useful upon his experience in a particular case, may work very badly, interfering with the obtaining of justice in many other different cases. And when you come to put them all together, you have a great variety of statutory rights. Each one of these is a statutory right. I heard the other day a lawyer in New York boast that he could postpone any litigation for seven years, and I asked a lot of friends as I came along whether that was true, and they all said they did not doubt it. How? Why, by compelling

the honest fellow that comes into court to redress a wrong or to secure a right, to litigate one after the other these statutory rights that have been created by the Legislature. Courts cannot ignore them because they are rights given by law. The courts must observe the law, and so the plain man who wants to get a wrong redressed has, bristling between his demand for redress and his judgment a dozen litigations that he has to fight out before he can get to the end of his cause.

My friends of the Bar, we have been making our system of procedure here conform to the subtle, acute, highly-trained ideas of lawyers. That is not the true basis. The system of procedure, of course, cannot be simple, but as far as possible, it ought to be made to conform to the plain man's intelligence and experience. It ought to be so that the farmer and the merchant and the laborer can understand it, and know why he is delayed in getting his rights; can understand that the processes to which he is subject have a reason and know what the reason is, otherwise you cannot have that respect for the law, that confidence in its justice necessary for the maintenance of a system of just administration. And furthermore the existence of this great variety of minute, detailed statutory provisions has been breeding up a great number of code lawyers, and by that I mean lawyers whose principal concern is with the statutory code of rights and not with getting justice for their clients. Now, we ought to get back, get back to the fundamental idea of our profession which is the administration of justice. These minute, particular Code provisions substitute rules, multitudes of rules for the justice of the particular case. I agree with Mr. Brackett. I am old enough at the Bar to have the men who were my partners, my juniors, my clerks, sitting on the bench, and I look at them from a different angle from that which I can recall forty or fifty years ago when I looked up to those men high up above — they are men like the rest of us. But, my friends, they are honest and just. They want to do justice if they can be permitted to. They will do justice if they are permitted to. This network of meticulous rules that are made by our Legislature with honest purpose prevent them from doing justice in the particular case; and the people of our State and of our country understand this. They may not understand the details. They may not know why, but they feel that the pathway of justice is obstructed. They feel that the honest man would better lose his claim than go into court and spend his time and money in the law's pursuit which seems to have no end. And they are indignant over it and restless and dissatisfied over it, and they look to us to do something. Now, what is it? What can we do? I can assure you that I have done the best I could for years to try to find some

formula, some method by which the thing that the Constitutional Convention of 1846 did could be done again, for by a different route we have come into the same condition with which they dealt and after most earnest thought, particularly as the result of the discussions in all these Bar Associations, I have not found anything that offered so much light as the proposal of our Judiciary Committee.

Now, it is not simple, but show us something better. We must do something. We cannot go home and say to our friends and neighbors we have given you no relief in this matter that concerns you so deeply. Show us something better than that. What is it? In the first place it requires the Legislature to act upon this report of the Commission on statutory provisions. It does not say how they shall act. We don't undertake to interfere with them in that. In the second place, it requires them to pass some sort of a brief civil practice act and adopt some sort of rule of procedure; it requires these two divisions. That is following what our neighboring State of Connecticut has adopted. They have a practice act that you can fold up and put in your side pocket. When the Legislature in its wisdom has done that, then two results are provided, one is that the Legislature shall stop the eternal tinkering with the practice, stop passing laws which are brought in here by individual members upon a narrow view of the occasion for them; shall stop every year pouring out a stream of amendments, and making new rules to cure the evils of old rules, and shall confine its action to periodical action upon the report of a commissoin. I agree with the idea that the Legislature itself has not the time to elaborate and work out a system. They have got too many other things to do. Accordingly the practice has become quite universal of having commissions appointed which shall prepare and present to the Legislature well-considered measures. The Legislature is given the fullest power; that is, it retains the fullest power to act upon reforms. It does not have to have the recommendation of the Commission. When the Commission has reported, the Legislature can throw their recommendation out of the window if it sees fit; but the action of the Legislature is concentrated on the point where it has the report before it, so that it will act upon the subject and not upon the ideas of A to-day and B to-morrow and C the day after, upon particular rules but it will act upon a system of practice as a whole, upon the report of a commission of its own selection, and it will act once for all until another period has elapsed, and so you stop this meticulous interference with practice, and you have an opportunity to test the provisions which the Legislature adopts from time to time on the reports of its commissions.

In the meantime the courts are authorized to proceed with their immemorial function of amending and adjusting the rules subject to the practice act of the Legislature so that they will contribute to the doing of justice in the individual case and discourage these technicalities and subtleties which tangle justice in the net of form. Now, there is nothing that cannot be criticised; nothing that cannot be doubted. Of course the judges when they come to make their rules may make rules that Mr. Wickersham would approve and Mr. Brackett would disapprove, or it may be just the other way. But if the judges make rules or amendments to the rules that do not on the whole seem to be right, at the next period, when the Legislature takes the subject up, it will put into its practice act a provision that will control the bad rule. This provision reported by the Committee is highly meritorious in that it compels the Legislature to act in the broad way upon procedure as a whole, and at the same time it enables the Legislature to control and correct any tendencies by the court to go wrong in either direction. I have seen and heard of no proposal to accomplish the thing that we clearly must accomplish which seems to be so effective as that proposed by the Committee.

The Chairman — The question is upon the adoption of Section 6, just under consideration. Those in favor of its adoption will signify by saying Aye, those opposed No. The section is adopted.

Mr. Wickersham — In view of the nearness to the hour for recess, before entering upon a new section, I move that the Committee take a recess until half-past eight.

The Chairman — The question is upon the motion of Delegate Wickersham that the Committee now take a recess until eight-thirty. Those in favor will signify by saying Aye, those opposed No. The vote is carried, and the Committee stands in recess. Whereupon, at 5:23 p. m., a recess was taken until 8:30 p. m. of the same day.

AFTER RECESS — 8:30 P. M.

(Mr. Wagner in the Chair.)

The Chairman — The committee will proceed with the consideration of Section 7. The Secretary will read the section.

The Secretary.— Section 7. The court of claims is continued and it shall be a court of record. It shall consist of the three judges now in office who shall hold their offices to the expiration of their respective terms and their successors who shall be appointed by the Governor by and with the advice and consent of

the Senate and who shall hold office for nine years. The Legislature may further increase the number of judges of the Court of Claims by permanent or temporary appointment, but not to exceed five in all. The additional judges heretofore appointed shall continue to serve until the first day of January, one thousand nine hundred and eighteen, or such earlier date as shall be determined pursuant to law. The court shall have power to appoint and remove a clerk and such court stenographers and attendants as the Legislature may provide. The judges shall continue to receive from the State their present compensation and allowances until the Legislature shall otherwise provide. The court shall have the jurisdiction now exercised by it and such additional jurisdiction to hear and determine claims against the State as the Legislature may provide. The judges of the court may separately take testimony in relation to any claim, but no award shall be made except by a majority of the whole court. The court may establish rules to govern its own procedure.

Mr. Clearwater — This was framed and presented by the Judiciary Committee after a very full consideration of the entire question involved. The Attorney-General of the State informed the committee that on on the first day of July last claims against the State aggregating sixty millions of dollars had been filed and were pending the Court of Claims. Now, the history of that court and of its predecessors, the court and board of claims, is a very illumining example of how an important body dealing with matters of the greatest moment to the people of the State and to the government of the State can be made the football of designing men, for purely selfish purposes. Just a brief account of what has preceded the present proposed amendment may not be altogether uninstructive. The original board was a Board of Audit which consisted of the Comptroller, Secretary of State and the State Treasurer, who were authorized by the Laws of 1876 to hear all claims against the State, which, previous to that time, usually had consisted of claims for lands taken for the State canals and for damages resulting from the overflow of water in the State canals upon adjacent land. That Board continued to audit these claims until 1883, when the Legislature abolished the Board of Canal Appraisers. There was a very great scandal as to the appraisements of the canal appraisers, and they created the Board of Claims. That Board continued for 14 years, until 1897, when the Legislature created a Court of Claims with a somewhat enlarged jurisdiction. In 1911, owing to exigencies well known to the delegates of this Convention and which it is not necessary to detail, that Court was abolished and the Board of Claims was revived with precisely the same jurisdiction that the ousted and

defunct Court of Claims had exercised. In the year 1915 that Board was abolished and the present Court of Claims was revived. As I have taken occasion to say heretofore, it is imporaant not only that this Convention should deal with existing evils but that it should guard against pending evils and in order to avoid this ricochet between the Board of Claims and the Court of Claims and the unseemly practice of their succeeding each other in the course of political events, the committee have presented this amendment making this court a constitutional court. On the hearings before the committee two classes of thought were presented. First, the gentlemen having the interests of the State at heart and the interests of the claimant at heart then and there advocated what the committee has embodied in this amendment, the creation of the court of claims as a constitutional court with jurisdiction to hear all claims against the State, clothing it with sufficient power to do justice as between the State and all claimants, whether large or small, in such manner that its procedure should be simple and informal and free from those technicalities and that expense incident to the prosecution of claims as ordinarily prosecuted in courts of justice.

On the other hand, gentlemen representing claimants, gentlemen of distinction at the bar, not altogether unrepresented on the floor of this Convention, very earnestly urged upon the committee the abolition of the court as a court and the sending of all these sixty millions of dollars of claims to the Supreme Court for adjudication. As I have said, after very careful consideration, listening to all that was offered on both sides, the committee presented the amendment we are now discussing. As undoubtedly, sir, the very views which the committee were unwilling to adopt will find advocacy and expression here, I may as well present some of the reasons which led the committee to adopt the plan which they recommend for the consideration of the Convention. In the opinion of the Committee and in the opinion of men best informed upon this subject, having at heart, as I have said, both the interests of State and the interest of claimants, it was thought, and is thought, that to send these claimants into the Supreme Court in the various counties where they reside or where the claims arose, would result in several evils. In the first place, it probably would result in the State being compelled to pay a very much larger sum by way of damages than the State should pay. There would, of course, be -- every claimant would have that local influence which his standing in the community, his influence, the various tentacula which important men have and can extend when they wish to do so, all would be brought to bear in a local

tribunal with a result not at all beneficial to the State or to the proper administration of justice. In addition to that, sir, calendars in all these counties to which claims would be sent would be clogged with cases of the State. If the Legislature made them preferred claims, then the court would have to take up the cases of the State first, while private litigants would be compelled to wait, which would add, of course, to the law's delay in the adjustment of the rights of the State citizens. If the Legislature did not make them preferred causes, then they would take their regular place on the calendar, intervening with the cases of private litigants, with the result that litigants would be suspended, like the coffin of Mahomet, in the air, inasmuch as they will be awaiting a trial of their own cases, while the cases of the State proceed leisurely before the tribunal. That was not thought advisable and cannot be thought to be advisable. In addition, sir, a proceeding before the Court of Claims, as I stated a moment ago, is important. There are no pleadings. A claimant first, under the provisions of the Code of Civil Procedure, files notice of his intent to file his claim — that is, notice to the State, that a claim is about to be presented, and the State can make inquiry as to the justness of the claim. Then the claim itself is filed. And then the claimant, upon notice to the Attorney-General, can bring the claim on for trial at any of the sessions of the Court of Claims. Now that court sits here in this building and it sits in Utica and in Rochester and in Syracuse and in Buffalo. And it has the vast advantage not only to the State and to itself, but to the litigant who claims against the State, that it views the property involved. That is to say, the court itself visits the *locus in quo* and looks over the property which it is claimed the State has taken or the State has injured.

It is not necessary that I should say to the gentlemen of this Convention, either who are members of our profession, sir, or laymen, that there is a vast advantage in that procedure. Nothing is more satisfactory than the evidence of the senses, and when the court, with the claims and with the claimant's counsel visits the property involved in the claim, there can be pointed out to the court, and the court readily can grasp those salient features of which it gets a much fainter idea from the lips and testimony of witnesses. It is needless to say that notwithstanding the introduction of the gasolene engine it would be practically impossible to take the court and the jury and convert the Supreme Court into an ambulatory tribunal carrying it around to view the property with the jury in tow. Another thing rendering the plan devised by the Committee advisable and desirable is: By law the Attorney-General represents the State on the trial of these claims.

He has a staff of deputies thoroughly familiar with this kind of professional work. If the matters were presented to the Supreme Court in the various counties, either his staff of deputies would have to be very largely increased with a corresponding increase of expense to the State, or claims would have to be turned over to the district attorneys of the various counties who represent the State, and there they would be subject to these seductive, subtle influences of the locality and of the claimant, if he is at all powerful, or they would be so austere and astute in the conduct of their case, that the claimant would suffer at their hands. In the ordinary courts, the Supreme Court or the County Court, if it were given the jurisdiction, pleadings would be necessary and all the many pestiferous questions arising out of pleadings and their construction, their admission and their denials, their sufficiency and their redundancy — all would be involved. We have none of that now and it is not desirable that our intent to simplify the practice of the law and to assist claimants of all variety, it is not desirable to increase the difficulties in presenting claims to a tribunal. And then, many of these claims are of enormous amount, running up into millions of dollars. They take weeks to try — three, four, five, six, seven, eight, nine weeks to dispose of. The maps, the estimates, the surveys in public offices here in Albany, would be required in several places at the same time, and, owing to the indivisibility of matter of that sort, it would be utterly impossible to have them present in two places at the same time, with the result that very great delay would ensue. Now those are a few of the major reasons which induced the Judiciary Committee to present this recommendation. The court as it is now constructed has a most eminent jurist, a member of this Convention, as its chief judge, a gentleman of the highest personal character, of noted habits of industry, whose extreme modesty prevents his appearance here to-night when this matter is being presented to the attention of the Convention, a gentleman who has distinguished himself in every field of effort — Judge Rodenbeck. His colleagues are Judge Ackerman of Niagara and Judge Fennell of Elmira. All three are very able, very conscientious men, men to whom it is perfectly safe to entrust not only the interests of the State but the interests of all claimants against the State. I have here, sir, what can be presented if it becomes important to do so, the opinions of two Attorney-Generals relative to this precise matter.

The action of the Committee has been endorsed not only by the State Bar Association, very cordially and very enthusiastically, but by many other bar associations. It was advocated by Judge Cullen, recently retired as chief judge of the Court of Appeals; by the present Attorney-General, Judge Woodbury; by Mr. Moot.

of Buffalo, of whose attainments as a lawyer and publicist it is not necessary for me to speak in this presence; by the presiding judge of the Appellate Division of the Third Department, Judge Walter Lloyd Smith, and by a bar association in the very heart of this claimant district, the Onondaga Bar Association, many of these claims arising in the county of Onondaga and its vicinity. Therefore, we trust that the recommendation of the Committee will commend itself to the judgment of the delegates to the Convention, and that it will be adopted as a part of the organic law of the State.

Mr. Westwood — I offer this substitute: The Court of Claims is abolished from and after the first day of January, one thousand nine hundred and seventeen, and thereupon the seals, records, papers and documents of or belonging to such court shall be deposited in the office of the clerk of the county of Albany and all actions and proceedings then pending in such court shall be transferred to the Supreme Court for hearing and determination. Suits may be brought against the State as against an individual exclusively in the Supreme Court, in such manner, in such counties, and within such limit of time as may be provided by law. But no jury shall sit in such cases and nothing herein contained shall be construed as reviving causes of action barred by lapse of time. The judges of the existing court of claims shall continue to exercise the powers they now possess until the expiration of their terms. I have listened with a great deal of pleasure to what has been said by the distinguished member of this body who has spoken in support of the committee recommendation, and I listened with interest to the list of names of eminent lawyers and publicists who recommend the continuance of the court of claims. There is, however, Mr. Chairman, another list of eminent men whose views seem to run contrary to that expressed by the gentleman, and I have in my hand printed papers upon which their names appear. They seem to be propositions of constitutional amendment introduced in this Convention within the last three or four months. The first one is Print No. 15, by Mr. Brackett. The second one is Print No. 95, and the next one is Print No. 320, by Mr. Ostrander. The next one is Print No. 353, by Mr. Angell. The next one is Print No. 414, by Mr. Latson, and I find here another dealing somewhat with the subject, Print No. 626. So it is evident that there has been in the minds of the members of this Convention a considerable germ which ripened into the opinion by one of the committees of this Convention, I think the Committee on Canals, which reported favorably upon the proposition that the State should permit itself to be sued as an individual may be sued. The fairness of that proposition at once

commends itself to the ordinary man. It takes the subtleties of the lawyer and of an historian to understand how it can be that the State should be immune from suits, while the individual must stand in danger of judgment.

What difference should there be on the part of the liability of the owner of an elevator, if that owner happens to be the State of New York or the corporation or individual which has title to a large office building down on State street! If the judge and myself, or both of us together, take the elevator out here in the hall and through some defect in that elevator which could have been discovered by inspection, it falls from the third floor to the ground, and we are both seriously hurt, we have no cause of action against the State, the owner of the means by which we sustained our injuries. While, if we had gone into the elevator at the Ten Eyck hotel, and the same thing had happened, our cause of action would have been perfect.

Mr. Quigg — Isn't there a distinction to be drawn there?

Mr. Westwood — I am going to try to come to that distinction, Mr. Quigg.

Mr. Quigg — May I suggest it to your mind?

Mr. Westwood — Yes, I would be glad to have you.

Mr. Quigg — At least the distinction that is in my own mind.

Mr. Westwood — Very well.

Mr. Quigg — It is this which it seems to me justifies a peculiar court, a particular court for the trial of these cases, and I hope you will consider this. When the suit is brought against the individual owner of the elevator, against the railroad company, or against some other concern or individual, somebody pays the judgment, and he is very careful about it. When the suit is against the State nobody pays the judgment, it gets lumbered up in charges against the State; nobody has that personal interest in it that compels it to be considered carefully. Now isn't that a justification of a court of claims?

Mr. Westwood — Whether it be or not, on which perhaps you and I will disagree, it is no longer considered to be a distinction by the large number of jurisdictions to which I will refer, and of that distinction I trust I may point out my view of before I finish. This subject was somewhat suggested to my mind thirteen years ago by a catastrophe that happened at the Fredonia Normal School owned by the State, when that school burned down. The school was so appointed that the third floor was given over to the young ladies attending the school from abroad. The fire broke out, it became very severe in a few moments and the young ladies, some of them, in trying to get down the fire escape which had been provided adequately, a modern fire escape, found that

through some carelessness or other act of almost criminality, the way out from the hallway to the fire escape was effectually blocked and later the bodies of nine of those young ladies were found in the smoldering ruins. No cause of action lay, while if that thing had happened across the street, in a building owned by private individuals, a cause of action would have lain. Those are direct concrete illustrations, the contemplation of which, as I said a moment ago, would leave the ordinary individual to put the question to himself and to his lawyer friend why that distinction should exist.

There was a time when in none of the jurisdictions in this country, neither the Federal nor any of the States, did a cause of action exist against the sovereignty except by special provisions of the representatives of the people; but there to-day it is provided that suits may be brought against the State in such manner and in such courts as are prescribed by law. In the Constitutions of California, Ohio, Tennessee and Wyoming, it is provided that the State may sue and be sued, and the Legislature may provide by law in what manner and in what courts suits shall be brought. The same obtains in the Constitution of Nebraska. That the Legislature shall direct by law in what manner and in what courts suits may be brought against the State — in the Constitutions of Arizona, South Dakota, Washington, Wisconsin and Kentucky and that the Legislature may provide by law in what manner claims against the State may be established and adjusted in the Constitution of South Carolina. In no European country, unless it be Russia, to-day, can the individual be denied his suit against the sovereign. Judge Story, in his work on the Federal and State Constitutions, written some years ago and before any of the State Constitutions or enactments permitted such suits, wrote in this respect: "There is marked contrast between actual right and practice of redress in the National government as well as in most of the State governments and the right in practice maintained under the British Constitution. In England, if any person has, in point of property a just demand upon the king he may mention him in his court of chancery (by what is called a petition of right), where the chancellor will administer right, theoretically as a matter of grace, and not upon compulsion, but in fact, as a matter of constitutional duty. No such judicial proceeding is recognized as existing in any State of this Union as a matter of constitutional right to enforce any claim or debt against the State. In the few cases in which it exists it is a matter of legislative enactment. Congress has never yet acted upon the subject so as . . ." And I may observe here, Mr. Chairman, that if my information is correct, in addition to the fifteen odd States from whose Constitutions I have just quoted

there are other States which by Legislative enactment have permitted suits generally to be brought against the State. "Congress has never yet acted upon the subject so as to give judicial redress for any nonfulfillment of contracts by the National government. Cases of the most cruel hardship and intolerable delay have already occurred in which meritorious creditors have been reduced to grievous suffering, and sometimes to absolute ruin, by the tardiness of a justice which has been yielded only after the humble supplication of many years before the Legislature. One can scarcely refrain from uniting in the suggestion that in this regard the Constitutions, both of the National and State governments stand in need of some reform to quicken the legislative action in the administration of justice; and some law ought to be provided by which a pecuniary right against the State or the United States may be ascertained and established by the judicial sentence of some court; and when so ascertained and established the payment might be enforced by an absolute appropriation. Surely it can afford no pleasant source of reflection to an American citizen proud of his rights and privileges that in a monarchy the judiciary is clothed with ample powers to give redress to the humblest subject in a matter of private contract or property against the crown, and that in a Republic there is an utter denial of justice in such cases to any citizen through the instrumentality of any judicial process. He may complain, but he cannot compel a hearing. The Republic enjoys a despotic sovereignty to act or refuse as it may please and is placed beyond the reach of the law. The monarch bows to the laws and is compelled to yield his prerogative at the footstool of justice." As Mr. Quigg will no doubt recall, Congress has enacted laws of sufficient scope so that individuals who have valid claims in a wide number of classes against the Federal Government may present them either in the Court of Claims in Washington or in any district court where the cause of action may arise. I don't know whether Mr. Quigg was a member of the Congress which enacted that law —

Mr. Quigg — I don't understand that they can bring it anywhere, Mr. Westwood.

Mr. Westwood — I think so, by comparatively recent enactment, if my recollection of the statute is correct, within certain limitations; but the old circuit courts, now the district courts, are open to that jurisdiction.

Mr. Quigg — Not while I was there.

Mr. Westwood — This same matter was under consideration in the Constitutional Convention convened in the State of Ohio just three years ago now, and on second reading it passed — I am now speaking of the proposition to make the State amenable to suits

on the part of individuals — it passed on second reading by a vote of 76 to 6 and on third reading by a vote of 71 to 12. It is suggested by those who opposed this rule that to permit suits to be brought against the State as against an individual is a surrender of sovereignty. I deny it, Mr. Chairman. One of the attributes of sovereignty is justice, and the State does not commence to exercise its complete sovereignty until it accords to all of its citizens that fullest measure of justice which it demands for itself. The State is composed of all of us. We make the State. What is the distinction? Where lies the difference between the right of myself to sue all of us or to sue one of us? The suggestion made by Mr. Quigg, it seems to me, should not militate against the real right of the thing, else causes of action against the State should be taken away from individuals except so far as they have up to now been granted. The same argument will support an effort to take away from individuals the right of action against municipalities which they now have, if, perchance, public servants have become so derelict in their duty that they will not give the State propert protection and proper defense. It is certainly not one of the attributes of the kind of justice we love to think about that the State should deny justice to its citizens to save itself against the carelessness of some public officer. If, then, the State of New York should modernize itself by coming to that same degree of justice that the monarchs of Europe have come, to that same degree of justice which the government of the United States and the governments of 15 or 20 of these States have come, and we should decide here and now that there is no valid reason why the State should stand behind the barrier, so-called, of sovereignty, then comes the question of where the citizen may go for the determination of his claim against the State.

As it is to-day practically all of the cases decided in the court of claims are contract cases or those arising out of condemnation proceedings. But, when the State has permitted itself to be sued as an individual, it should be sued as an individual and where the individual is sued. The Supreme Court has all the jurisdiction, equity as well as of law. No further legislation is necessary. The State possesses a tribunal completely equipped to administer the kind of justice that ought to be administered. To abolish the Court of Claims and confer this jurisdiction exclusively upon the Supreme Court makes for uniformity, it makes against complexity, it makes for the same kind of thing that the Committee of the Judiciary has sought to obtain in the arrangement it has suggested in relation to the inferior courts in New York. It makes for the very sort of thing that every man in this Convention will agree is the ideal thing, getting away from complexity,

approaching simplicity. The objections made by Judge Clearwater that such cases might be brought in several different parts of the State, it seems to me, do not avail. If the individual has a right which arose in his county, or elsewhere, as the Legislature may provide, the State, the Great State certainly should not require him, who has, let us assume, committed no fault, to go to greater expense or more annoyance, or the expenditure of more time and money than as though the wrong has been done him by an individual. Certainly, the essence of justice, the embodiment of justice cannot defend itself against a proposition of that sort, because to require more expenditure of time and effort and money on the part of the individual where the State is concerned than where an individual is concerned is apparently unjust. My suggestion here is that the present Court of Claims, the members of the present Court of Claims, continue to exercise the powers they now possess until the expiration of their term. That meets, it seems to me, every fair objection that is made on account of the present accumulation of sixty million dollars of claims that have been filed against the State. If it is inadequate, if such claims shall not have been determined by the time the present members of that court shall go out of office, the Judiciary Committee report has conferred here very adequate means still within the body of the Supreme Court, still within a court which is competent to deal with that condition, and any other question; for in the eighth section of the article that they have proposed, which by the way is altogether new, for Supreme Court Commissioners and specifically suggest if not confer upon those commissioners the right or power to determine compensation to be paid for property, private property, taken for public use. It is true that there is a clause respecting cases where compensation is to be made by the State, but should the proposition which I urge meet the approval of the committee, it is easy enough to strike out just a half dozen words; and the committee has even gone farther, for in the Third and Fourth Departments they have provided that such commissioners may at the discretion of the Legislature be appointed. I have given an outline, Mr. Chairman, of the situation as it has occurred to me, supplemented by the suggestions that have been made to me in talking with a number of delegates to this Convention, and I know that the plain citizen, the farmer, or the blacksmith, or the merchant, or the salesman, cannot appreciate the distinction, but who would appreciate the justice of this thing if the State did now what other states have done and what European countries have been doing for some years.

Mr. Dunmore — May I ask the attention of the committee, Mr. Chairman, just for a moment. During the last recess I was spoken

to by some of the members of the Convention and asked questions as to what the purpose of my amendment was which showed that it was not fully understood by some of the members of the Convention, and with your permission I would like to make it clear to every member of the Convention what I was seeking to accomplish. If you will turn to page 9 of the article, the sentence that I desire to amend begins on line 19, "The courts shall have the jurisdiction now exercised by it and such additional jurisdiction to hear and determine claims against the State as the Legislature may provide." You will see by the reading of that article, or that sentence, that this article confers jurisdiction to determine only the amounts which the State shall pay, but when there are several claimants, whether by way of easement, mortgage, mechanic's lien, judgments, lease for years, rights of way, or any other claim, the Court of Claims has no power as between those claimants to determine the share of each in any award that may be made. Now, that makes it necessary, if the parties cannot agree that they shall have another lawsuit between themselves after the case against the State is tried, to determine what their respective shares in the award shall be. That makes an unnecessary expense, an unnecessary multiplicity of suits. Now, you can see how it might arise in the case of a mortgage. A farm may be taken by the State on which there is a mortgage which is to run for three or four or five years. The mortgagee may say you are taking away my security, and, therefore, I want the interest on it, up to the expiration of the time. The owner of the property would say why, you will take your money and loan it out to somebody else; you ought not to get interest out of me and then collect it again. So, they could not agree. Now, if the court of claims had the power to determine what the mortgagee's share of the award was, and what the owner of the property's was, it would avoid a second lawsuit, and similar claims; disputed claims may arise in the same way over leases or rights of way, or in other ways. Now, this amendment is offered for the purpose of giving to the court of claims the power to determine what those rights are, so that the whole question may be settled by the Court of Claims in one trial, and the delays and the expense which follow may in that way be avoided. I desire to read a sentence from the platform of the party represented by a majority in this Convention, the platform of 1914. It says, "We favor a thorough reform of judicial procedure. We believe that the delays and expense incident to the administration of justice should and can be materially reduced." When the President of this Convention was speaking so earnestly and eloquently, he said to the Convention, we cannot go home and face our constituents unless we do

something to redeem our promise to reduce the delays and expense in judicial procedure, or that in substance. Now that is simply what I am trying to accomplish. If there is any member of this Convention that does not understand fully what my amendment is, I would be very glad to answer any questions that he may ask. I seek to add after the word "provide" in line 18, so that the sentence would be as follows, beginning at line 16: "The court shall have the jurisdiction now exercised by it and such additional jurisdiction to hear and determine claims against the State as the Legislature may provide, including the power to determine the shares of conflicting claimants in any award".

Mr. Quigg — Mr. Chairman, I don't want to be distracted, although I think I sympathize with Judge Dunmore, from Mr. Westwood's substitute. I cannot vote for it. My experience in the court — always, I admit, as the defendant's lawyer in these tort cases, these claims cases — shows me that when the claim is brought against the city or against the State, the only defense that the city or the State has lies in the experience and integrity of the court. The corporation counsel does not do it. The Attorney-General does not do it. The Court of Claims is to be likened in its work to the surrogates in their work. It will be a great mistake to transfer the surrogates to the Supreme Court; so it would be a mistake to transfer the Court of Claims. These judges, educated in regard to these claims, knowing the law on these claims, are careful for the State. I have seen case after case decided right where I was listening to the evidence, against the city of New York, for double the damages that the jury would have given against even a railroad corporation, such as I was serving, simply because the case was not brought there right, because the public officials — they get their salaries, don't you see? If I get a verdict against myself, that is outrageous; I know what is going to happen to me. But is does not happen to the assistant corporation counsel. He goes on getting his salary.

Mr. F. Martin — Mr. Quigg, in all the years that I tried contract cases for the city, I found that juries in the city rarely gave an excessive verdict against the city, and the whole verdicts only amounted to two or three per cent. of the entire claims. Where was it that you have seen such enormous verdicts against the city and negligence on the part of those who tried the cases?

Mr. Quigg — Well, I have seen it, Mr. Martin. I have seen case after case so decided because it was not worked up with the industry and fidelity that a private defendant exercises in the defense of his rights. So I say that the State must depend upon the courts and therefore there ought to be a Court of Claims, men who give their attention to this particular business and are looking

out, conscientiously — they are sworn to their duty and they will look out for the interest of the litigant. They can be trusted.

Mr. Brackett — I understood you to say, men learned in this law. What makes you think so?

Mr. Quigg — What is that?

Mr. Brackett — What makes you think so?

Mr. Quigg — That they are learned in this law?

Mr. Brackett — Trained in this law.

Mr. Quigg — With respect to the board of claims?

Mr. Brackett — How long have the present members of the Board of Claims been trained particularly in this law?

Mr. Quigg — I am not talking about the present members of the Board of Claims; I don't know anything about them, but if they stay there they will get learned in it.

Mr. Brackett — I understood you to make the point that the Board of Claims were learned in the law with regard to the subject.

Mr. Quigg — I say that their experience as they go on in this work gives them that learning. I do not know anything about these particular men, but I know if they stay there — what do we do with every judge that is put on the bench except to spend two or three years educating him?

Mr. Brackett — Would not the same experience come to the judges of the Supreme Court if they tried the cases?

Mr. Quigg — No, not with respect to a particular subject so large as this in its importance to the State.

Mr. Westwood — Do I understand that you oppose both branches of the amendment that I sent up to the desk, to abolish the Court of Claims and also making the State liable to suit?

Mr. Quigg — No, I do not oppose the part of your amendment that makes the State liable to suit. I oppose the part of the amendment that abolishes the Court of Claims.

Mr. Ostrander — Don't you think that the increased sense of responsibility that our short ballot is expected to impose upon officers will take care of that negligence that exists in the present administration?

Mr. Quigg — Well, now, Judge Ostrander, don't get me off this. If there is anything you have to say of the iniquity of the short ballot, which seems to me, so far as the people are concerned, means more to pay and less to say, I will agree with you right away. But as for abolishing the court and its jurisdiction over these claims against the State, so many of which are ill-founded — as for abolishing a court that gives it attention to that particular subject, I believe it is very unwise. As for giving the people the right to bring suits, of course, I am for that policy.

Mr. Cobb — I don't think I can add very much to the very clear presentation of this subject made by Judge Clearwater, but I have had some experience in the Court of Claims and it is almost impossible for me to conceive that any person who has had experience with that court, who knows the rules, the procedure, the manner in which the business is transacted, can wish to shift that business to the Supreme Court. At the present time there are pending against the State claims aggregating $62,000,000. Of those, $59,000,000 grew out of the construction of the Barge Canal or out of the old canal; $51,000,000 of that $59,000,000 being for permanent appropriations, $3,000,000 for contract claims and $5,000,000 for damage claims. So that the great bulk of the work of the court is, as it has been for many years, the assessing of damages in permanent condemnation cases. Mr. Quigg was exactly right when he said that these men who serve the State as judges of the Court of Claims are peculiarly qualified in a special way to safe-guard the interests of the State and to give satisfaction to claimants. If you will consider the very large number of condemnation proceedings that this court has heard, the very large amounts that they have awarded, and then consider the almost trivial expense that this has been to the State, you will see that the court at least is working satisfactorily. A year's expenses of this court, with almost daily work, trying cases large and small, is less than that of some of the single condemnation proceedings in the city of New York under their commissioners. Now this court is in a class by itself in the conduct of these claims. Its procedure is simple. It acts largely as an auditing board. I have seen in the court at Syracuse twenty claims disposed of in an afternoon by the judge or one of their appraisers going out, for instance, to the village of Liverpool, where they have a very large willow damage, looking the matter over, reporting the acreage and the loss, and thereby the matter is fixed up to the satisfaction of the claimants and to the satisfaction of the State. In that way, to the entire satisfaction of the people of the State, and without robbing the treasury, that court has gone along. There is no one here claiming that claimants before the Court of Claims do not have ample consideration; no Bar Association is protesting; every one who has considered the matter is in favor of continuing this tribunal. Now, take a case — I do not like to talk particularly about myself, but, as an illustration, and because it may bring the matter home to some of you who have not had this class of cases, let me say that I had a case that involved the condemnation of a water power on the Oswego river. The judges all went up and looked over the property, looked over the mill, and got that knowledge which Judge Clearwater has referred to, which can only be

obtained by a personal examination. It then became necessary to come to Albany to consult the maps in the Comptroller's office and in the State Engineer's office, some of which, it was claimed, had been changed so far as the blue lines were concerned. One judge came down here to Albany and the evidence was taken here. Later in the case, and upon adjournment, it became necessary to come down here and put into the record a large number of manuscripts relating to the early history of the Oswego river and bearing upon the navigability of that stream. Now this litigation is not interesting particularly, as I am aware, to the Committee, but I am simply giving it to show how this court works and carries these cases along in a manner that the Supreme Court could not. Now, if we had these cases in the Supreme Court — there are claims pending in every county of the State; there are $12,000,000 of claims in Oswego county — it would clog the calendars. It would require the election of a large number of Supreme Court judges. If the gentleman who introduced this measure wants the claimant to have, as he says, the same rights that an ordinary litigant would have in court, then, in these condemnation cases, if you went into the Supreme Court, if you want to get what a man ordinarily gets, you would have three commissioners appointed, because a man is entitled to three commissioners, and you would go along with the procedure in that way. I will imagine a case. You are in court and a number of men are in there with some of these claims growing out of the overflow of the canal. A judge who has no familiarity with the business, who does not know the value of farm lands, who has not been over the road, is considering these claims. The procedure, as compared with that in the Court of Claims, is technical and formal; it is expensive and awkward and cumbersome, as to these claims, some of which are no larger than ten dollars. You have no way of adjusting claims as they are adjusted before the Court of Claims where the appraisers are there, and the necessary officers, to agree upon settlements. The whole procedure, the whole method, is very ill-adapted to being carried on in a formal court.

Mr. Westwood — Are you familiar with Section 8, which has been proposed by your Committee, which provides that one Supreme Court commissioner may be appointed for the purpose of appraisement in condemnation cases?

Mr. Cobb — I understood, in a general way, that we were trying to deal with that evil that has arisen in the city of New York and almost everywhere, excepting with respect to the Court of Claims, where property is condemned. Now, as I said, those judges become trained. The same class of witnesses comes up year after year, the same character of claims, and the matter works along with an ease and facility and to the satisfaction of all parties

interested. I do not want to repeat it over and over, but it seems to me it would be very difficult to get these results in the Supreme Court. Then, of course, you have to bear in mind — how are you going to take judgment against the State? As it is now, the Legislature makes an appropriation to pay these claims. They cannot be collected. You cannot slap a judgment on the State and collect it as you would against a private individual. Then you have to consider that in the Department of Public Works they have a bureau of claims whose special duty it is to co-operate with the Attorney-General's office in the preparation and trial of these cases. When you come to one of these large cases, involving millions, as some of them do, taking weeks for their trial, the Engineer's claim bureau and the Department of Public Works' bureau are busy with these matters. If you had these cases scattered all over the State where they might be moved against the State in the ordinary way in Erie county, in Monroe county, in Niagara county, in Onondaga county, where the State has to have some one present to look after them, where these same witnesses that are called in any one place cannot be available in another, you would seriously embarrass the Attorney-General's office in the conduct of its business. Now, the chairman of the Committee has handed me a letter that Judge John M. Kellogg of the Appellate Division, Third Department, which reviews these claims, has written. Among other things, he says: "My experience upon the Court of Claims has led me to believe that it should remain a separate court, the tenure of office to be protected by the Constitution, and that the duties of the office should not devolve upon the Supreme Court. We call the judges of the Court of Claims 'Judges,' but their principal function is the duty of an auditing and investigating board, which must not be held too close to technical rules or procedure, and the men filling the office should be men untrammeled by technical judicial experience, but broad-minded men who will hear and determine the cases in a broad-minded way so as to do justice to the claimant and the State. The claimant can always get witnesses; the State cannot, and if these cases were tried by the Supreme Court the State would be unable to pay the award."

Similar testimony was given by Judge Woodbury. I also have here an admirable letter that was written by Ex-Attorney-General Hancock. If it is not too tedious, perhaps I will read an extract from it, because it bears exactly on this question and is from a man who has had experience, and a wide experience, in this office. Breaking into the middle of the letter, he says: "The force of the Attorney-General's office will be inadequate to follow the various circuits, and the resulting appeals. The creation of new State officers in each county, or devolving the duty on existing

county officers, would increase the State salary list, and yet fail to provide concert of action in the State's behalf. The co-operation of the State Engineer's office and that of the Department of Public Works which are required in ninety per cent of such claims would be demanded from divers parts of the State for different claims at the same dates. Many concurring circuits must then fail to give any relief, resulting in delays injurious and expensive to the State and vexatious to claimants. Under the present system it is rarely that any claim filed cannot be heard at the ensuing session of the board of claims, if the claimant is ready." That is not true at the present time as there is an accumulation of business that is being disposed of at the rate of a thousand or fifteen hundred cases a year. The letter continues: "The existing complaint of insufficient opportunities for the disposal of business in the Supreme Court would be intensified. Claims frequently arise in classes and number hundreds at one time and place * * *."

"The Attorney-General would be hampered by the use of pleadings. These are not now required of the State. The change of a whole staff of deputies such as the new business would require, following elections, would leave the State's interest poorly protected. The change of judges who would hear the various claims would open the door for frauds, which would be detected or not attempted before a tribunal accustomed to such classes of cases and having sole charge thereof. The familiarity of the Board of Claims with the methods of claimants and with the witnesses who repeatedly appear against the State for them, which secures justice for the State, would be completely wanting when that jurisdiction was spread and that experience lost. The State would always be found appropriating the best land in the farm at fancy price." Well, I won't burden the Committee with any more data of that kind, but the demand all over the State from men who have had experience in this class of business is that this Court of Claims should be continued, that it should be constitutionalized so that it won't be subject to the frequent changes which it has been in the past; and that would result to their entire satisfaction. I want to say a word about Judge Dunmore's proposition. I don't see anything particularly vicious in this proposal. Neither do I see anything particularly advantageous. It sometimes happens that the State appropriates a piece of land where the owners are at odds, they are disputing, they are quarreling over the title to the land, or over some lien on the land, and there is confusion there. In those cases, under the present procedure, the money is deposited in the court, and an appropriate proceeding or suit has to be started in the Supreme Court to get possession of it. That is precisely the procedure you have in any case of condemnation. In the case of condemnation by a railroad, if there is dispute between the claimants,

the money has to be deposited in the court to deal with further. The only reason that I dislike to see these claims handled by the Court of Claims is this: They now are a court for dealing with one class of claims only, namely, claims against the State; and they make an award. They ought not, it seems to me, to enter the field occupied by other courts and undertake to determine disputes between private litigants. It won't seriously impede or embarrass the Court of Claims if you give them that jurisdiction. In my opinion it is better remaining as it is.

Mr. A. E. Smith — I didn't expect it would fall to my lot to be even in a position to say anything at all about the judiciary article, but on this particular point I happen to have a little knowledge, of which I thought the Convention should have the benefit, if there is any benefit in it. The Court of Claims has been more or less the football of politics in this building for about twelve or fifteen years. I have been present here while it has been kicked out and in again, and out and back again, and while by legislation the terms of the judges have been extended, and it is a matter of great satisfaction to me to know that, in speaking for the continuation of the court, my party was a mild offender in that respect. Now, if you are to have the court, it should be taken care of in the Constitution, so that there can be no recurrence of that. That you should have the court may be a matter for lawyers to determine, but every now and then, when the brain becomes a bit befogged by the heavy legal talk, a little slant from the layman helps a bit. Having no interest whatever in any claims against the State, and having considerably less in their attorneys, but having some interest in the State, and considerable interest in the taxpayers, I respectfully submit to the Convention that if we are going to continue to allow the State to be sued, let it all be done in one place, so that we can keep our eye on it.

Mr. Ostrander — I will endeavor, a little out of order, to offer an amendment which I find has been taken care of very admirably in most particulars by the amendment of Mr. Westwood, I want the State to be sued like anybody else. I want the Court of Claims to be abolished and I want justice done them as it is with other individuals. Now, I have not any quarrel with the gentlemen composing the Court of Claims. They do just as other gentlemen in similar positions will do. I have no quarrel with their jobs, but I do feel that this court is just as unnecessary as two tails on a colt. Coming right down and speaking out plainly in meeting, it has been for years jobs for men instead of men for jobs. Now, perhaps, that is a little plain speaking, but have you ever, most of you, been through the Court of Claims? My friend from Syracuse here tells us that fifty-nine millions out of

sixty-two millions of the claims that are pending here are claims for appropriations of property, real estate.

Now what does that mean? In practice it means this, that if you happen to live in Plattsburgh, you will come to Albany with your witnesses. If you are a prudent lawyer you will bring several men who have knowledge of real estate down here to swear what it is worth. When you get down here you will attempt to explain to the court something about what kind of property it was, and the presiding justice, whether he be of the Court of Claims, when that is in session, or the Board of Claims when the other party is at the bat, will lean over very benevolently and tell you that the only question is what it was worth before and what it was worth after. You need not describe it at all, it is not necessary for the court to know what sort of property it was or to what uses it was capable of being put but ask your witnesses or three of your witnesses what was it worth. Then your innings is out and the other man comes to bat. Then what happens? Why the State has had a great corps of men running up and down there for months and they have picked up generally two or three or four politicians of small repute in the neighborhood, none of whom has any information about land or ever knew really anything about it, and one of these is brought forward and he says, or he is asked, what was this property worth? A. Fourteen dollars and sixty-eight cents. You are the witness. Do you know anything about the value of real estate in your neighborhood? Well, he begins to hedge. Well, what is your business? Well, I am a bartender or a painter or a blacksmith. Then the judge very benevolently leans over and says: "You don't propose to question the competency of these witnesses, do you?" And if you are foolish enough to pursue that question much longer you will have another intimation that perhaps it would be just as well not to spend time over the competency of the witnesses — and the next man comes and he says $14.68, and he is equally competent, and the next man comes on and he says the same thing. Of course, to those of us who have any knowledge of human nature at all it never occurs to us to suppose that the witness' idea of that value is governed at all by the fact that he is getting $10 a day and that if he disagrees with the others he won't be a witness any longer. Next the record closes and the Court of Claims, the Board of Claims, or whatever the tribunal happens to be, views the land. One of the speakers to-night has very generously said he takes claimants' counsel along, but that is something that I never heard of before. The vice of it is that the view of it is evidence and if any of you ever try and get up the record where somebody has looked and his look is evidence,

you know something of the difficulties that attend such a situation as that. Now, of course, I do not mean to say anything about the good intentions of this court, but did you ever hear of any other court on earth that at the end of the year the clerk would report that "we disallowed so much in claims"? I don't know what it was for, but it struck me as novel to say so many millions were presented in claims and were disallowed, all but so much.

Now this is the procedure which takes these highly trained gentlemen to pass upon how much it was worth before and how much it was worth after, and if you have got one hundred dollars' worth of your property taken you have got to bring your lawyers and your witnesses from Plattsburg to Albany to tell about it and you can't get any costs or expenses. When you get through you generally advise your client that he would better let it go and then the client comes in and says that if he had a claim against the worst dead-beat in town he would rather have it than against the State, the fountain-head of justice. Now what is there so complicated about this procedure? Why should not there be, if need be, a commissioner in every county, if you had to, who could put these same questions to the witnesses and report to the court what was said about it? But my friend over here says you cannot enter judgment against the State. Doesn't the Court of Claims do that very same thing? Doesn't it allow judgment to hang up there until some time in the sweet future, until the Legislature appropriates something to pay it, and meantime the State pays six per cent. interest on the judgment? My friend says this is so speedy, you will get your hearing in the next term of the court. I am glad to say that there is some improvement along that line, but I have instance after instance that I could give you where the State came up and drew a blue line around a man's little house and lot, the only thing he had on earth, and the next week some smart young fellow came up and said "next Wednesday you will have to be out of there because the State is going to build a Barge Canal next summer." And they put him out without any pay, without any place on earth to go, without any means, because all he had in the world was in that little house, and the next step was a gang of Italians came along and were put in his house and lived there and worked somewhere else on the canal for a couple of years until they got around to use his place, and then after five or six years, this man who had been living a tenuous life, got his pay, and the State says we are paying you interest on this. A lot of use for them to pay interest on your money while you are sleeping in the trees! I am not blaming the court for all these delays, but this is a kind of two-edged sword. I am

blaming the State for this, a thing that is so simple as the adjustment, the appraisal of some property, it seems to me, that there is no use of having such a lot of detectives and expert witnesses, and traveling fees and delays. Now the claimant did not ask anybody to come and take his house away from him. The State concluded that they wanted it, and a great many times some young engineer, just out of school, decided that this route ought to go there when it might just as well have gone the other side of his house as not, and indeed I have known of many a case where they took a piece of land from a man's 40-acre place so as to cut off access to the place and the man could not sell it except for whatever price his neighbor might give, when there might just as well have been a right-of-way left. That I do not blame the court for, but I do say the court ought not to have its Attorney-General, who, by the way, is a large officer and an important one —he ought not to be free to urge every technicality that the genius of man can invent to tell why this man should not be paid for his place, or to delay the pay. Now what would you think of a business man that had such a highly organized legal department that it cost him $300 to remove a $30 lien from a piece of land? What would you think of a lawyer so careful in his examining a title to real estate, that when he found a mortgage on the land recorded on a certain page in the county clerk's book and turning over a few pages in the same volume found the discharge of that mortgage recorded also in the book, would insist that no pay should be made for that land until the county clerk noted on the margin of the original mortgage the fact that it had been discharged over on another page which the attorney knew all about; and then when you went to the county clerk and asked him, for Lord's sake to make that entry as you were about to starve to death and he said to you, "I would like to make it, but the law don't permit me to make it, but you go to the Supreme Court and get an order to tell me to do it, because it did not happen within my administration."

Now, there you are. The Attorney-General won't approve your title, you cannot get your money, and the clerk won't make the notation on the mortgage, unless you go to the court and get an order to do it. You begin to wonder about who ought to be mandamused in a case of that kind, and while you are reflecting on that and the difficulties of mandamusing a State officer several months have gone by, you have finally got the question of mandamus rather acute, and the Attorney-General says I guess that perhaps I won't require you to do it. Now, what I stand for is that the State is none too big to be honest and fair and just, just as it requires every other man to be; and if the State is honest

and fair and just, it won't be afraid to go into any tribunal that it requires anybody else to go into. But my friend down below says, the State officers are careless and he won't pay any attention to this law suit; he will let the State be soaked all the while for damages; and it occurs to me that there must be some remedy for that, and that need not be a reason why an expensive court should be always continued to take care of such things as that. Now, when these three million dollars of claims come along between the fifty-nine millions and the sixty-two millions which are scattered all over the State, it does seem to me that there might be a Supreme Court justice who had comprehension enough to try those cases, even if they don't try them every day. I am told that there are localities where Supreme Court justices are so rushed that they would not have time to try them; and I am also told, that the abolition of this court would require several more Supreme Court justices to be paid for. I think the common experience of men along in the counties where claims arise is that the Supreme Court justices would have time to look out for a fair vacation, notwithstanding their various duties. If they had three or four more of these intricate cases to try, why, it would not prolong the terms of court very much. If a sheriff's jury is competent to take hold of a fifty thousand dollar case, where there doesn't happen to be any appearance, I think it ought to be entirely competent to say what ten acres of land that has been taken is worth. It ought not to be a very long process to get at that, and the man ought not to be dragged across the State to prove it.

But my friend says we have got the Court of Claims. Why, they can go right in there and settle twenty-five cases a day. The men who represent the State can just walk out in the corridor of the court with a claimant and come in and tell the court what it has agreed to and everything goes along smoothly. I myself am at a loss to understand why that could not be done in the corridors of the Supreme Court just the same as in the corridors of the Court of Claims. Now, I don't want to be any bear about things, but we have talked budget here with all the zeal of a new convert. Have we in our Constitution making taken any thought of the budget making idea? Let me cast a shadow ahead of you for a little bit. Now, you have got now more than a hundred million dollars of bonds which you are paying interest on. You have got more maintenance to pay on those same highways than you have of interest. Within five years, or six or seven at the most, you have got to rebuild every rod of your highway. You have got to build a highway for the fellow that has been helping pay for these that has not got any himself. You have got two hundred more millions of Barge canal bonds which you have got to pay

interest on and maintenance on, and you have got the stuff that came out of these rivers to make the Barge canal very largely piled up inside of the banks of these streams where the high water of every rainfall will run the bank back in and you have got to pump that back out. You have got right at your doors here a load of taxation that if you sat down and thought about it, it is going to be appalling. I can pick out here gentlemen that have got a mortgage of $125 on their heads, and every man, woman and child in the meanest tenement in their bailiwick has got it; and then I can pick out very much more favored gentlemen who have got only $75 on their heads. I would hate to stop and think what would be the result if somebody foreclosed these mortgages on them. And these questions of expense, while I don't bear so much on them, but I want solemnly now and every other time when I have a chance to call attention to the fact that we are very much in the position of the man who goes up and very innocently sticks his fingers in between the rolls of a paper machine; and if you know anything about paper machines, you know that when he does that he is going to hear his heels crack pretty soon. Now, when we begin on the question of raising salaries, or creating useless departments, and failing to cut out such deadwood as we can cut out here, we are not doing what the people of the State generally expect us to do, and we are putting the fingers of the State in the rolls of this paper machine, and while there are many good things that can be done by this court and are done by it, and I would not detract by any word from the ability of the gentlemen who handle it, yet there is no more need for this than there is for six wheels on a wagon. Everything that it does can be done by the other courts and the expense of it saved.

Mr. Quigg — Don't you believe that the expense of it, if it were in the Supreme Court, would be very much heavier than in the Court of Claims?

Mr. Ostrander — No, sir, I do not. I see no reason why it should be.

Mr. Quigg — And don't you believe that every one of these things which you have spoken of as embarrassments in the adjudication of claims would be much more serious in the Supreme Court?

Mr. Ostrander — I cannot see any reason for it.

Mr. Reeves — It seems to me very clear, and especially from the general argument of the last gentlemen, that the report of the Judiciary Committee retaining the Court of Claims should be sustained. I wish to say just a few words here in favor of the amendment offered by Judge Dunmore. It seems to me that unless the Judiciary Committee recommends to us some much

stronger reason for not accepting that amendment than we have yet heard, it certainly ought to go into this proposal, since it simply provides that the power is to go to this court to adjust various claims among those who are to be paid the money. Now, Mr. Chairman and gentlemen, when we used to have partition suits in the Courts of Equity, and some of the parties defendant set up claims of title adverse to one another it was necessary to send the matter over into the court of law and try out the title and then come all the way back again into equity after the title had been determined. We have tried carefully in our code to provide against going to the two courts in that way, and we amalgamated our law and equity practice in order to do that, to get it all done in one court, and in these partition suits that used to be cumbersome in that way and involved the action of two courts that tried it out, that the titles could be tried, that future estates could be partitioned, no longer is it necessary that the party should go out after the judgment and make deeds among themselves, and we have kept it all in the one court and insisted that the one court should finish the work, and therein we unquestionably did right. It used to be that in foreclosure suit if the property did not sell for enough to pay the debt, the plaintiff must go over into the court of law and bring a separate action for the deficiency and get his judgment there; two courts involved; and a man might have argued, well, it is all right; it is simply a matter of going over into the other court; but we find it right and proper and conducive to celerity of the judgment and favorable to the parties litigant to provide in our amalgamation of the two practices that we should have that deficiency judgment right in the one action, and then we went on and provided that in case there was more than enough to pay the debt, we could have our surplus proceeding right in the same court and in the same action. Now, we can go on with illustrations like these of the policy of our State, and all that the Dunmore amendment asks is that you shall give to the Legislature the power to carry out that same policy with regard to this Court of Claims, and if you stop and think about it a moment, we are bound to be convinced that it will improve the court, shorten the litigation, save expense and save these people whose property is thus taken double litigation and much more expenditure of time. We have heard complaints here to-night of the difficulties in trials before those judges. If those judges were given the work of investigating claims of this character, looking into the questions of title that would arise and ferreting them out and deciding upon them, it would call for better judges in the long run, the work would be better and more quickly done, the character of the court would be improved and the liti-

gants would be saved time and expense. I very much hope that the power in the Legislature that this slight amendment calls for, to provide that there shall not be double litigation, will be added as an amendment to the proposition submitted by the Judiciary Committee.

Mr. Brackett — I would prefer not to say anything to-night as the time is so nearly up. I have a few words that I want to say.

Mr. Wickersham — Mr. Chairman, I hope that the Senator will say them now. We have been all the evening on this one section, we have thirty sections to consider, and if we expect to get through I think we must make progress and I hope the committee will be willing to continue until we dispose of this section.

Mr. Brackett — Mr. Chairman, without agreeing to that, I will proceed with the very few words I wish to say on this subject. I shall not at this late hour, Mr. Chairman, attempt to engage the attention of the Convention for any length of time, nor would I say a single word on the subject at all, if I did not believe that there was a genuine evil here which should be corrected, an evil that, during the years it has came into my ken to observe, has come to be one which I believe this Convention should radically cure here. I had hoped that one of the great accomplishments of this Convention would be the reduction or the abolition of every useless office; that nowhere would it permit to remain, on attention being called to it, a single official place that could possibly or profitably be spared in the administration of the State government. We have come to a point where just such a step could profitably be taken, where it would not only be to the tremendous good and saving of the State, but of every litigant in the State that has to come into this court. And in what I say, I have no criticism whatever to offer as to the personnel of the court or the manner in which the personnel of the court carries on the work. Following for a few steps the thought contained in the amendment offered by the gentleman from Chautauqua, Mr. Westwood, I remind the Convention that the State has a dual character. It, of course, first, has its sovereign capacity, and in that sovereign capacity it cannot be sued, nor in that capacity, should it be sued. Time does not run against the sovereign. The theory is that the government, whether it be the king or whether it be the administrator of a republic or of a free State, is so busy with the State's business that the ordinary statute of limitations and the ordinary rules applicable to lawsuits should not apply to the State in its sovereign capacity. But in the modern carrying on of the State the principal business of the State has come to be, not its soverign duty, but its business duty. The State has become one vast business machine. It carries on its hospitals, it carries on its multifarious work, not in its sovereign capacity at all, but as a great

business corporation. Now, whenever the State, not abandoning but parting from its sovereign duties, goes into business, then that minute the State should subject itself to every law of business and to every liability that attaches to carrying on that business.

If you, Mr. Chairman, will examine the case of French Republic v. Vichy Springs, I think, in 190 U. S., you will find this doctrine enunciated, which is not at all a new doctrine, but which was so clearly enunciated by the court through the pen of the then Justice Brown of that high tribunal that it is well that we should read the particular language that he uses. You will find there enunciated the doctrine where the question came up as to whether the statute of limitations had not run against the right of the French Republic — of course, a sovereign — to bring a suit — Justice Brown made the distinction which I have given. As I recall, he illustrated — if he did not illustrate in his opinion, I know I illustrated upon the argument; and while it was not as well done, as if it were the statement of Mr. Justice Brown, it is just as true — if the State in the performance of its business takes a check, it is required, in case that check is not paid, in order to protect the check, to hold the drawer thereof just as much as though it was a private individual. Or if, in the conduct of its business, it can be conceived that in the settlement of a claim it should take an indorsed note, the indorser must be charged, in case of the nonpayment of the note, just the same as though the note was held by an individual instead of by the State. I mention this to illustrate that when the State goes into business it subjects itself, and must subject itself, to every rule of business which attaches to a private individual doing the same kind of business. It stands, then, Mr. Chairman, that the State does thus go into business and is subject to the same rules and obligations that attach to an individual — it follows, it seems to me, as a necessary corollary that the State should submit itself to the jurisdiction of its courts, exactly like a private individual. Will you tell me any reason why the State is any better than an individual in its litigations? Will you give any valid reason why a court that is good enough for you, Mr. Chairman, and for myself to settle our differences in a legal way is not good enough to settle the differences of the State? If it is not thus good enough for the State to come into and submit to its jurisdiction, if the State feels that the character of its courts is not high enough or their learning great enough so that it can properly come in and submit to the jurisdiction of those courts, then, in God's name, abolish the courts and give us individuals who are subject to the jurisdiction of those courts something better, and that is good enough for the State to come into! So, upon the first branch of the amendment which was so

ably argued by the gentleman from Chautauqua, it seems to me there could be no possible doubt that there should be in this Constitution somewhere a provision that the State should submit itself to the jurisdiction of its courts precisely as it requires an individual or one of its citizens to submit himself. Now, sir, on this submission, with any safe-guard that you please — I am not much in favor of these requirements that notice must be given to a municipality before it can be sued; but if it is required to protect the interests of the State that such a notice should be given, require that it be done. If there is a shorter statute of limitations required in the case of a state than in the case of individuals, let that shorter statute of limitations be provided for. If there is anything else that is necessary in order to protect the rights of the State in the procedure in its courts, let those steps be provided. But let it be understood that from this year of grace, 1915, the State has so far advanced in fairness, it has so far advanced in justice to those who deal with it, it has so far advanced in its own notions of decency in paying its creditors at the earliest possible moment, that it says to the people of the State and to the world, in its Constitution, that it submits itself to the jurisdiction of its courts.

What then? It is said, "Very well, concede this proposition;" and it is difficult to see how in fairness there can be any denial of this proposition. But then it is said by my learned friend from Ulster, submit to the Court of Claims. Now I am somewhat confused by the arguments that are made with respect to this by those who favor this tribunal. I have been accustomed, in the Legislature, and as I have read chiefly in the prints, to hold very steadfastly to the doctrine that this was strictly a court; that the members were judges and they render judgment, and on that decision judgment is entered; and that, finally, the Legislature of the State makes the appropriations to pay the judgment, because it is a judgment. They are judgments from which appeals can be taken. They have every essential attribute of a judgment. And so I have held to the doctrine that this tribunal has been strictly a court. But I find myself strangely shaken in this belief to-night when I find several of my Republican friends who have suggested the doctrine urging that it is really not much of a court anyway, simply a board, a kind of a "smelling" committee to find out what claims should be audited against the State. If that is so, put it down here in the Comptroller's office, where it belongs. If it is simply a body for the purpose of auditing claims, then let it go to the proper auditing officer of the State, the Comptroller. But assume it is a court and the better reasoning entirely is that it is a court, where is the superiority of having one court instead

of the ordinary courts of the State that hear claims against the State? The gentleman from Saratoga has told you of claimants that have come 193 miles from the city of Plattsburg down here to try a particular case against the State, and having come down here over and over again they are simply told, when they get into court with their witnesses here, that the case is not ready, and they go back home. And if they are not too discouraged, they come back again, very likely to be told the same thing again. Why, Mr. Chairman, if I should stand here and tell you — if I should simply list to you to-night the cases of the wrongs and injustices that have been worked, not by intent, but by fact, not that any member of the court has meant to fail to do his duty, or perhaps has failed to do his duty, but because of the cumbersome machinery that exists here and is the only way in which the claimant can get his claim against the State allowed. If I should simply stand here and list the claims, I should outrun your patience as I should outrun any reasonable hour of the night before you adjourn. It stands, and I certify to you with all the earnestness of which I am capable that over and over and over again, and scores and scores of times it comes that the claimants against the State are simply tired and worn out by the delays and the expense and the distance that they must come and finally take whatever may be offered to them by the agents of the State. Is that decent, Mr. Chairman? Is that decent treatment on the part of the State? Shall the State take advantage of its rights to make laws and to make the processes of the court — by those laws to make the processes of the court so cumbersome that they wear out the men who have claims against the State, without ever having the claims presented? Now, tell me, Mr. Chairman, as a lawyer — and I appeal to the 120 men here in this Convention who are lawyers — tell me what possible harm will come from saying to the claimants who have claims against this State, "We now distribute these among the different counties in the State where they are the causes of action raised in the Supreme Court. That would put the great bulk of them on the canal, they would stretch from here to Buffalo to the west, up the Black River canal and up the Champlain canal to the north.

It means that at the next term of the court instead of having one body here, sitting here, and hearing the claim you would have between now and the first day of next January, of the following January, I will say, you would have within the first year after this was adopted, twenty, thirty, or forty — yes, more than a hundred, courts that would have had jurisdiction to hear these claims and would have heard them in the vicinage where the witnesses live and where the claimants would not have been compelled at great expense to bring their witnesses. They would

have been heard in these different forums. I don't care to have them heard by juries. I think it would be well to have them heard by juries but if there is any more safety to the State, have them heard by the justice of the court without the juries,— and do you not think that the justice of the Supreme Court can just as well hear fifteen or twenty-five cases in an afternoon as can a member of the Court of Claims? Is there any reason why the man so trained in the law and with a man who is recognized as so able that he is placed on the Supreme Court bench, the bench of our great court of general jurisdiction, is there any reason why he cannot settle 15 or 25 claims in an afternoon? Mr. Chairman, Judge Landon, of the Supreme Court, and at one time of the Court of Appeals used to say that the Supreme Court coming around to hold the circuit was really and truly in some cases a scare-crow to make the people settle their claims against each other, and that the great majority of claims were in effect settled without actual trial. It would seem, Mr. Chairman, that in the different thirty or fifty jurisdictions where the claims might be pending, the same number of claims would be settled at each term that would be settled at any term of the court here, and inside of two years every claim of the sixty-three million would be wiped out and settled by some kind of a decision. Of course the sixty-three million simply means this: Somebody who has a claim that actually and honestly might be filed for five thousand dollars, will file a claim for five million, and he might just as well file it for ten million. Don't let anybody be disturbed by that sixty-three million claim against the State. Here is another evil. Having come down here the three or four times before his claim is reached, and not having been heard he comes in court and makes his appearance with his proof, the plaintiff does, or his attorney, and presently there comes on the turn of the State in the trial, and presently comes on a witness for the State, and who is he. Why, he is somebody employed by the State as Judge Ostrander has said at ten dollars a day which may or may not be a qualification, but he is a witness for the State who is employed permanently by the State to come in and swear on these things, and he is there and is sworn day after day on these cases and by a remarkable process, I suppose by the interposition of a divine Providence, the court of which he is a constant attendant and who hears him sworn every day, grows into the habit of accepting his estimate, no matter what the proof of the claimant is, and so it comes that these paid witnesses who are really regarded finally as a part of the court, simply by their testimony,— their testimony is simply accepted by the court, and either a review must be had which, in 99 cases out of a hundred, is impossible, or else the claimant must

accept this estimate of a hostile witness. Now these abuses have grown so great, Mr. Chairman, that in his first message to the Legislature, in the year 1915, as I recall — I haven't the text before me, but as I recall, the present Governor of the State, in his message urged that the Court of Claims should be abolished and that the duties thereof should be cast into the Supreme Court. It is a recommendation which we well might heed in this Convention.

There is one thing more, Mr. Chairman, and I am done. It is said that the Attorney-General of the State cannot attend to the trial of cases except in one place, that it would not do to have twenty different circuits, running in twenty different places. It is the simplest thing in the world that the law shall impose on the district attorney of each county the duty of trying the case for the Attorney-General, when the Attorney-General sent the papers to him and requisitioned that he should do so, and without a cent of expense to the State. Instead of being an additional expense it would positively save expense in having less requirements in the Attorney-General's office. You could put on the district attorneys of the counties wherever any of these claims are pending, this duty, and claims could be tried expeditiously, with greater economy for the State, with infinitely greater economy for the claimant, and you will have done justice to everybody, and will have given evidence in this Convention of having a sincere wish to abolish offices which have really and truly become useless.

Mr. Clinton — I wish to say that these questions were referred by the Convention not only to the Committee on Judiciary, but also for opinion to the Committee on Canals. The Committee on Canals carefully considered all branches of the argument which has been made to-night; that committee gave its opinion, and that was duly transmitted to the Committee on the Judiciary. While the Committee on Judiciary has not gone quite as far in regard to the conferring of jurisdiction upon the Court of Claims, it has covered the ground, all the grounds, and has agreed upon the same policy that the Committee on Canals did. I wish to say this: that, after all is said and done, and without imputing to any of those who have spoken against this section any selfish purpose, the taxpayers of this State are depending upon us to protect the treasury of the State, that they are expecting us to dispose of these questions that come before us from the point of view of giving us a system which will take care of the suitor fairly, and, so far as the State is concerned, will protect it, and that when it comes to subjecting the sovereignty of the State to actions for torts and negligence, the people of the State will say to us, you are piling on taxation and simply enlarging the field for the

ambulance-chaser. When it comes to legitimate claims for lands condemned in contracts, they will say to us, if what has been urged here is adopted, this body which we sent here to care for our interests, in which sit over 100 lawyers, has simply opened another field for the exercise of their profession. They will want to know from us why we have done this, why we have abandoned precedent, and why we have not protected the treasury of the State of New York in the interest of the taxpayers. I, for one, do not propose by my vote to put myself in that position. Just one word more, since the gentleman from Saratoga has spoken of the injustice to suitors of having to come to Albany. One thing in the mind of the Judiciary Committee, one thing in the mind of the Committee on Canals, was this: To relieve that situation, and you will find in the section this clause, "The judges of the court may separately take testimony in relation to any claim—

(Mr. Brackett interrupts with a remark.)

Mr. Clinton—Mr. Chairman, I am sorry the exuberance of feeling on the part of the gentleman from Saratoga has induced him to disregard parliamentary rule, which requires him to address the Chair.

Mr. Brackett—Mr. Chairman, I make my profound apologies to the gentleman and to the Chair. I thought he was so accustomed to speaking that he would not be annoyed at being interrupted, but I was wrong. I tender my apology for not having addressed the Chair.

Mr. Clinton—I suggest that the gentleman from Saratoga has again violated the parliamentary rule.

Mr. Clearwater (handing book to Mr. Clinton)—Will the gentleman read from the Code? I draw his attention to the thought as to residence of the claimant in any case.

Mr. Clinton—That is the substance of the clause, but the idea here is that the powers—that the Legislature may provide that what corresponds to the former circuits of the Supreme Court may be held by the judges of the Court of Claims except that the same judges may not pass finally upon awards, and that they shall go through the appointment of regular times for hearings in the different parts of the State to take the testimony of witnesses. I have done, Mr. Chairman.

Mr. Wickersham—Mr. Chairman, I desire to say one word more before coming to a vote. We have already spent enough time on this section, if we are ever to get through this article, but the Committee will perhaps pardon me for adding one word. We started out in favor of devolving the jurisdiction of this court upon the Supreme Court, but the compelling testimony of the judges and officers of the State who appeared before the Committee, finally satisfied the Committee that in the interest of the

State and in the protection of the treasury of the State, it was essential to preserve the Court of Claims and not to allow the consideration of the millions of dollars of claims against the State of New York to be distributed through the various districts of the Supreme Court and to be submitted to the local influences that surround courts in the different parts of the State. The Court of Claims is established for the purpose of doing justice between the State and those who have just claims against it which the Legislature has authorized to be presented, and in no other way than by a court of this kind can the treasury of the State be protected from the raids that would be made upon it if its jurisdiction were placed otherwise. With respect to Judge Dunmore's Proposed Amendment that when the State takes land it makes an award: If there are conflicting claims to the land, the Court of Claims is not an appropriate tribunal in which to decide those conflicting claims. They can only be decided in a court of general jurisdiction. There may be a right of trial by jury. The Court of Claims is not organized to have such trials. It is of course persuasive that all issues be tried in one court, but the nature of the court forbids it in that case. On the whole, it was the mature, deliberate conviction of the Committee that the jurisdiction should rest where we have placed it here, and I earnestly hope that this Committee will support their conclusion.

Mr. Leggett — I had not intended to say a word on this subject. I had not thought that I was qualified to do so. But I want to express my surprise at the remarkable speeches that have been made for this remarkable provision, in behalf of this body, sometimes called a court and sometimes something else. It seems that this is part of the scheme, you might almost say, not designed, but it is a scheme, for delaying claims, for delaying compensation to people on whom the State has laid its powerful hand and from whom it has taken its property; and while the gentlemen have been very solicitous to save the State any expense, they seem to have forgotten the rights of the individuals and they have been neglected, and I say again I am surprised, from the character of the gentleman who has made this apology, at the remarkable kind of work they have tried to defend.

Mr. Dunmore — Mr. Chairman, just one moment. The statement has been made here in regard to the Court of Claims, or Board of Claims. I wish to say I have the utmost confidence in the Court of Claims, as to its ability, as to its learning, as to its integrity, and I am perfectly satisfied that it should be trusted with the powers to decide the questions that come before it, as we are now entering upon a new departure. Heretofore the court has simply been a Court of Audit, but as was well said by Gen-

eral Wickersham in his opening remarks, we are now making it a part of the judicial system of the State. It is now made a constitutional court like the other courts of the State, and you may follow the duties prescribed and the powers prescribed in those courts from Justice of the Peace up, and every one of the courts of original jurisdiction, mentioned in this article, is given full and ample power to determine the questions that come before it, except the Court of Claims. Now, if that is to be a part of the judicial system of the State, if it is to be really a court, then do not give it the powers only of a board of audit, but make it a court and give it power to deal with every question that is necessary — to dispose of the questions before it.

Mr. Tuck — I want to call attention to one point. Most of the claims presented to the court are Barge Canal claims. I would refer to chapter 147 — the Barge Canal Act — when the Barge Canal referendum was presented to the People of the State, it provided that the claims for damages arising under construction, the contract should be sumbitted to the Court of Claims. Now, that may be amendable, it may not be to make that a constitutional body, but it is an expression of the people upon that subject.

Mr. Clearwater — In answer to the gentleman on my left, Mr. Leggett, as to the interest of the claimant. In the interest of the claimant the Legislature has enacted that the court may hold session and take testimony where the claimant resides or where the claim is alleged to have arisen or in the vicinity of either. Now, that answers the gentleman from Saratoga, Mr. Ostrander, and the gentleman, Mr. Leggett. The Legislature has provided with extreme care for the interest of the claimant, and it is surprising that men of standing in this Convention should want to throw open the floodgates for raids upon the treasury of the State of New York, under the miserable pretext that it is done in the interest of the claimant. Every man within sound of my voice knows that is not true, and every man within the sound of my voice knows that is a mere pretext to get into a local tribunal for the purpose of recovering an exaggerated claim against the State of New York. The delegates of this Convention owe a duty to the State. Is it their duty to guard its interests? The Court of Claims is not constituted in derogation of the sovereignty. The philosophical and historical reason for the State not being sued is that the State is not a citizen, and that is what is forgotten by these gentlemen. Why, sir, never was there a better measure presented to a Constitutional Convention than this, in the interest of the public, in the interest of the taxpayer and in the interest of the litigant, the claimant himself.

The Chairman — The question occurs upon the amendment offered by Judge Dunmore.

Mr. Dunmore — Mr. Chairman, I ask for a rising vote.

Mr. Buxbaum — Mr. Chairman, I ask that it be read again.

The Secretary — On page 9, line 18, after the word " provide," insert " including the power to determine the shares of conflicting claimants to any award."

The Chairman — Those in favor of the amendment will please rise. The gentlemen will be seated. Those opposed will rise. The gentlemen will be seated. The amendment is lost.

Mr. Dunmore — Mr. Chairman, I desire to offer another amendment which I think every member of the Committee will agree to. If the Court of Claims is not to be given power to decide all of the claims that come before it, then I simply desire to add to my amendment as given before, the words " providing the claimant shall file with the court consent that the court may so determine the amount of such shares " — that is, giving the power to determine the amount of the share of each claimant, providing consent is filed with the court before the decision is made, if the court shall so desire.

Mr. Wickersham — I trust that amendment will not be adopted. You cannot confer jurisdiction by consent.

Mr. Dunmore — This Convention can give power to litigants to consent, and if all the parties interested in a claim desire to have all the questions settled in one suit in the Court of Claims why should that right be withheld?

The Chairman — The Clerk will read the amendment for the information of the Committee.

Mr. Brackett — Mr. Chairman, I have no objection to the reading of the amendment, but I call attention to the fact that there are other amendments which have come in first.

The Secretary — On page 9, line 12, after the word " provide ", insert " Including the power to determine the shares of any conflicting claimants in any award, providing that prior to the decision of the Court of Claims, there shall be filed the consent of all the claimants that the court may so determine the amount of such shares ".

The Chairman — The question now occurs on the amendment offered by Mr. Westwood.

Mr. Westwood — As a substitute, Mr. Chairman.

The Chairman — The amendment is in the nature of a substitute. Does the Committee desire to have the amendment read again? The question occurs on the amendment. Those in favor of its adoption will signify by saying Aye, opposed, No. The amendment is defeated. The question now occurs on the amendment offered by Judge Ostrander.

Mr. Ostrander — Mr. Chairman, I will withdraw that amendment, as I think it is covered by the amendment of Mr. Westwood.

The Chairman — The amendment is withdrawn. The question now occurs upon the amendment which is offered by Judge Dunmore, just read. Those in favor of the adoption of the amendment will signify it by saying Aye, opposed, No. The amendment is defeated.

Mr. Westwood — In view of the fact that my amendment or proposed substitute really involved two questions which were not separated in the vote already taken, I now offer this amendment, a copy of which is at the desk.

The Chairman — The Clerk will read the amendment.

The Secretary — By Mr. Westwood. Add at end of section 7: Suits may be brought against the State as against an individual in such manner, in such courts and within such limit of time as may be provided by law. The Legislature may provide that no jury shall sit in such cases and nothing herein containd shall be construed as reviving causes of action barred by lapse of time.

Mr. Westwood — That addresses itself to the proposition whether or not the State shall permit justice to be done against it as against individuals.

The Chairman — The question occurs upon the adoption of the amendment. Those in favor of the adoption of the amendment will signify by saying Aye, opposed No. The amendment is defeated. The question now occurs upon the adoption of section 7. Those in favor of its adoption will signify by saying Aye, opposed, No. Section 7 is adopted.

Mr. Wickersham — Mr. Chairman, I move that the Committee do now rise, report progress and ask leave to sit again.

The Chairman — Mr. Wickersham moves that the committee do now rise, report progress and ask leave to sit again. Those in favor of the motion will signify by saying Aye, opposed, No. It is carried.

(The President resumes the Chair.)

Mr. Wagner — The Committee of the Whole has had under consideration Special order No. 61, begs leave to report that it has made progress and asks leave to sit again.

The President — The question is on granting leave. All in favor will say Aye, contrary, No. The Ayes have it, and the leave is granted.

Mr. Low — I ask unanimous consent to submit the report of the Committee on Cities upon the bill which was recommitted to it.

The President — Is there objection? The Chair hears none and the report will be received. Under the resolution to recommit, the Proposed Amendment to the Constitution keeps its place in General Orders. The report goes to the Committee of the Whole.

Mr. Buxbaum — Mr. President, I ask unanimous consent for the introduction of a motion or resolution, at this time? I ask that the Printing Committee order one thousand additional copies of the address of the President made this afternoon, for distribution among the delegates. I believe it would serve a very useful purpose and would enable the delegates to circulate it among their friends and constituents. I believe the President has stated the sentiment of every delegate here and this will, as I said before, serve a very useful purpose.

Th President — Under the rules, the resolution will go to the Committee on Printing.

Mr. Wickersham — Mr. President, I move that the Convention do now adjourn.

The President — It is moved that the Convention do now adjourn. All in favor of that motion will say Aye, contrary, No. The motion is agreed to and the Convention stands adjourned until to-morrow morning at ten o'clock. Whereupon, at 11:10 p. m., the Convention adjourned to meet at 10 a. m. Friday, August 20, 1915.

FRIDAY, AUGUST 20, 1915

The President — The Convention will please be in order. Prayer will be offered by the Rev. Clement Graham Martin.

The Rev. Mr. Martin — Almighty God, unto whom we look for wisdom in all our deliberations, we pray Thee to look with favor upon this Constitutional Convention this morning, blessing Thou its President and all its members with clarity of judgment and clearness of purpose in all the deliberations of the day. Give unto us health and Thy blessing to the honor of Thy Holy Name. Amen.

The President — Are there any amendments to be proposed to the journal as printed and distributed? There being no amendments proposed the journal stands approved as printed. Presenta-

tion of memorials and petitions. Communications from the Governor and Other State Officers. Notices, motions and resolutions. The Secretary will call the roll of districts.

Mr. Dunmore — Mr. President, on account of an important matter which will keep me at home to-morrow, may I be permitted for the first time to ask to be excused from the sessions this evening and to-morrow?

The President — All in favor of granting the excuse asked by Mr. Dunmore will say Aye, contrary, No. The excuse is granted.

Mr. Dick — It is quite necessary for me to be absent from the session to-morrow and I ask to be excused from to-morrow's session.

The President — All in favor of granting the excuse will say Aye, contrary, No. The excuse is granted.

Mr. Standart — The Record shows I was not recorded on the call of third reading on some of the measures yesterday morning. I should like to have the Record show that I was unavoidably kept from the sessions by reason of a slight injury to my eye.

The President — The Record will so show.

The President — Reports of standing committees.

Mr. Fancher — May I ask for the indulgence of the Convention to request to be excused once more for to-morrow.

The President — All in favor of granting the excuse asked for by Mr. Fancher signify by saying Aye, opposed, No. The excuse is granted.

Mr. Vanderlyn — It is necessary, Mr. President, for me to be away on Saturday and Monday, and I request to be excused Saturday and Monday morning.

The President — If there is no objection Mr. Vanderlyn will be excused from the session, as requested. Mr. Jesse Phillips has asked the Chair to excuse him for to-day. All in favor of granting the excuse say Aye, contrary, No. The excuse is granted. Reports of standing committees.

Mr. J. L. O'Brian — The Committee on Rules submits the following report.

The Secretary — Mr. J. L. O'Brian from the Committee on Rules submits the following report recommending the adoption of the following special rule: Resolved, That when the Committee of the Whole resumes consideration of General Order No. 61, the Judiciary Article, speeches of individual members be limited to fifteen minutes, unless in individual cases such time be extended by vote of the Committee.

Mr. J. L. O'Brian — It is the view of the Committee on Rules that the Judiciary Article is of such importance that every member

should have the right to express his views if he desires to do so. The Committee, therefore, at this time, recommends no limitation in the length of the debate, but it is apparent after the experiences of the recent sessions we having now spent four days on this measure, that some limitation of the time of individual members ought to be made in fairness to the bill and in fairness to the other members. We have, therefore, fixed fifteen minutes as the time limit with the provision that the Committee may in individual cases extend that time by vote. I recommend the adoption of the special rule, Mr. Chairman.

The Chairman — Are you ready for the question upon the resolution? All in favor of the resolution will say Aye, contrary, No. The resolution is agreed to. Reports of select committees? Third reading.

Mr. Wickersham — Mr. President, I move that the order of third reading be dispensed with for the day.

The President —All in favor say Aye, contrary, No. The motion is agreed to. Unfinished business in general orders. Special orders. The Convention will go into Committee of the Whole for consideration of the special order of the day. Mr. Wagner will resume the Chair.

The Chairman — The Committee will resume consideration of Special Order No. 61. The Committee is now considering section 8. The Secretary will read the section.

The Secretary — Section 8. Supreme Court commissioners may be appointed as hereinafter provided, one or more of whom may be designated by the court to determine the compensation to be paid whenever private property is taken for a public use in the judicial department or district for which they shall have been appointed, when such compensation is not made by the State, and who also may respectively be designated as referee whenever issues are properly referred for determination or report, and who shall perform such other or further duties as may be devolved upon them by special order or rule of court by the Appellate Division. In the first judicial department the Appellate Division from time to time may appoint such commissioners as it deems necessary and fix their compensation which shall be uniform, and a charge against the city of New York. In the second judicial department the Appellate Division from time to time may appoint for each of the counties of that department within the city of New York such commissioners as it deems necessary and fix their compensation which shall be uniform in each county and a charge against the city of New York. The Legislature may at any time authorize the appointment of supreme court commissioners in the third and fourth judicial departments and in the counties in the second

department not within the city of New York. Such commissioners shall be members of the bar of not less than ten years' standing. They shall not practice as attorneys or counselors in any court of this State or of the United States.

Mr. Wickersham — Mr. Chairman, I understand the Clerk is reading section 8, but before he does that I would like to move to strike out the two paragraphs, two sections in the existing Constitution, which are bracketed out in this bill. That is, present section 5 and section 6, both of which are now obsolete, which provide for the abolition of the merging of the Superior Court of the city of New York and of the Court of Common Pleas of the city of New York and abolishing all courts of Oyer and Terminer. Those sections I move to strike out.

The Chairman — The Chair suggests that that automatically follows after the adoption of section 8, if it be adopted.

Mr. Wickersham — Should not that motion be put as we go on? I move that the report of the Committee recommending the striking out of those two sections be concurred in.

The Chairman — Those in favor of the motion will signify by saying Aye. The motion is carried and the report is adopted. The Secretary will continue the reading.

The Secretary — They shall hold office during the pleasure of the respective appellate divisions by whom they shall have been appointed. The official referees now in office are continued, and any judge of the court of appeals or justice of the Supreme Court who at the time of his retirement from office shall have served as a judge of a Court of Record in this State for twenty years or a full term of fourteen years as a judge of the Court of Appeals or a justice of the Supreme Court, and who shall have attained the age of sixty years, may be appointed as an official referee to hold office during the pleasure of the court, by the Court of Appeals, if a former judge of the Court of Appeals, or by the Appellate Division in the department embracing the judicial district in which he resides if a former justice of the Supreme Court; and except as provided in this section no official referees shall be appointed, nor shall the Legislature hereafter create any similar office. Until the Legislature shall otherwise provide, official referees shall have and may exercise the powers and duties now prescribed by law, but the Legislature may at any time alter or further regulate or prescribe their powers and duties and shall fix their compensation, which compensation shall be paid in the manner now prescribed by law. Supreme Court commissioners and official referees during their continuance in office shall hold no other office under the State.

Mr. Stanchfield — This provision seeks to incorporate into the

organic law entirely new matter, and I think I may say to the Convention that this section reflects the unanimous vote and support of the Judiciary Committee. This Judiciary Committee is composed of seventeen lawyers, every one of whom, it is fair to assume from his presence in this body, is a lawyer of standing, integrity and probity in the community that he represents. This committee of seventeen lawyers in presenting the judiciary article to the Convention has had in its making the advice and support of every ex-chief judge of the Court of Appeals in the State and the present chief judge. We have also, by letter and by personal appearance, the support of the chief justices of the various Appellate Divisions of the State, likewise the endorsement of civic societies and bar associations all over the State. The seventeen lawyers that make up this committee are men who have strong individual opinions, and have conducted during the two or three months of the session of this Convention a series of public hearings, and executive sessions running from ten to one, two or six and eight to twelve in which every member of this committee has not only had the fullest and freest opportunity to express his individual opinion with reference to the merits of these various provisions but there has been protracted debate thereon. The entire judiciary article, with the exception of such opposition as has been voiced by two of the members of the Judiciary Committee to the article upon the board of claims, has the support of the entire committee. I am making these observations with a view to limiting, in a way, debate, because we conducted in the sessions of the Judiciary Committee a miniature convention and this product is entitled before this body to corresponding influence and weight.

The article to which your attention is now addressed has to do and deal, first, with the establishment of a body of men who are known and designated upon the face of the article as Supreme Court commissioners. In some of the hearings that took place before the Judiciary Committee it became manifest and apparent that the city of Greater New York with its constantly increasing activities in every direction was necessarily engaged in its growth in a great many condemnation proceedings, and the corporation counsel of the city of New York, in reply to an inquiry addressed to him, reported to the Judiciary Committee that there was pending as of July 29th, of the current year, 220 condemnation proceedings, in which the city had an interest. An investigation conducted thoroughly and along fair and impartial lines developed that where they seek in the city of New York to condemn private property for public use that the proceedings are continued over a series, not of days, or of weeks, or of months,

but of years, and that the expense incident to the carrying out and consummation of those condemnation proceedings has become too burdensome for the municipality to bear with equanimity. The information that filtered into this Committee from various sources was to the purport that, speaking in general terms, the expense incident to the acquisition to title to land by the city of New York cost something like 10 per cent. of the improvement. In other words, to make a more concrete illustration, if the city sought to condemn property, the appraised value of which would be a million dollars, the ordinary going expense incident to the acquisition of that property would be about $100,000. Now, coupled with the delay incident to adjournments by the various commissions, attributable perhaps, largely, to requests of lawyers who are engaged in those proceedings, it became apparent to the Committee that it was essential to reform the procedure in that respect. Therefore, one of the main functions laid at the door and imposed upon the so-called Supreme Court commissioners is that they may act in the capacity of condemnation commissioners. This section, upon its face, is permissive and not mandatory. It gives to the court the power in its discretion to appoint these so-called Supreme Court commissioners who could act upon these condemnation proceedings and thereby save both time and money. There is another feature peculiarly appealing to the judgment of your Judiciary Committee, that is the high cost and expense to litigants of references conducted in the city of New York. While it is true that there is compensation fixed by the provision of the Code of Civil Procedure to which referees are entitled, that provision is regarded more in the breach than in the observance, and it is quite the custom, and one might say the rule, for lawyers to go before a referee in the city of New York, and I take it the practice obtains all over the State, and stipulate in writing that the referee's compensation may be fixed at a certain sum, either by the hour or the day, as the case may be, with the frequent result in the city of New York, as statistics demonstrate, to amount to a practical denial of justice.

Therefore, there has been embodied in this article, and incorporated therein, in language sufficiently clear and, in general, comprehensive as to accord to the courts the power, if they see fit to exercise it, to devolve upon these so-called commissioners the power to act as referees between litigants. These men who are to be appointed under this article as Supreme Court commissioners must have had ten years' professional standing, and are precluded by the terms of the section from engaging in the active practice of law. This article is so clear upon its face that I do not propose to impinge upon the time of this Convention, valuable as I

know it to be, unless there be some pronounced objection to the provisions with reference to these Supreme Court commissioners. The second phase of this section has to do with the appointment and the eligibility for appointment of so-called official referees. One dislikes to use in a body of this dignity as applicable to the judiciary, the word "pension." Therefore, the Committee has studiously avoided it and yet, upon the other hand, we realized to the fullest extent that when you pick a man out of the active practice of his profession and put him upon the bench during the working years of his life and he retires at a period when it is impossible for him to get down upon the level of the profession and indulge in a scramble for business, that there ought, in common justice and common fairness, to be some provision made by which he is at least insured a moderate livelihood in his declining year. Therefore, we have provided in this article that when a man shall have served as a judge of a court of record in this State, for twenty years or a full term of fourteen years as a judge of the Court of Appeals, or a justice of the Supreme Court, and who shall have attained the age of sixty years, if he comes from the Court of Appeals, he may be appointed an official referee to serve during the pleasure of that court. If a justice of the Supreme Court, he may be appointed by the Appellate Division to serve in a like capacity. Their compensation is to be such and their powers and duties as prescribed by law. That is the purport of the section. It reflects, I repeat, in conclusion, the entire and unanimous support of your Judiciary Committee and we bespeak for it at your hands the favorable consideration to which it is entitled.

Mr. Quigg — Mr. Chairman, there are two features of this paragraph. No. 6: One is to provide between the active practitioners at the Bar in New York and Brooklyn, to provide between them and the judges a sort of judicial aristocracy, responsible to nobody except to the Appellate Division that appoints them. The other is indirectly to provide a pension system for retired judges. When this article was printed I read it over, line for line, letter for letter, in the careful effort to find out how it affected practicing lawyers. I mean men who try cases, because in affecting them, it affects litigants all over the department.

Now, I don't mean lawyers who sit in their offices and tell their clients what not to do. I mean the men who, like myself, earn their livings in the daily attendance upon the courts in the constant work of trying cases and arguing appeals. I saw two sections that affect us seriously, because you see the first thing we want is a good and responsible judge, and the next thing we want is a fair and intelligent jury. I am compelled, therefore, to turn

from the section that we are now considering to the section with respect to a jury, because it is all the same subject. How can we get a righteous judgment? The section that I refer to is twenty-nine, with respect to the qualifications of jurors, and I would treat that first, if I may. It says — that is a great reform — the Committe has done splendid work up to a certain point; it says that no person qualified to serve as a juror shall be exempt —

Mr. D. Nicoll — You are skipping over?

Mr. Quigg — I am skipping over.

Mr. D. Nicoll — To where?

Mr. Quigg — To twenty-nine, because, Mr. Nicoll, I am considering judge and jury both. "No person qualified to serve as a juror shall be exempt from jury duty except a person actually employed in the service of the State or of a civil division thereof or of the United States, a soldier or sailor of the United States army or navy, a member of the national guard of the State or a volunteer fireman", a practicing physician. Now, I think that reduces the number of persons who are exempted, or the number of classes who are exempted, from about thirty to something like about five, and I heartily approve that, only I don't see why anybody should be exempted except a soldier or sailor of the United States. I believe that everybody ought to serve as a juror and ought to have his two weeks, lawyers and all. We will be bound by the direction of the court, and better know how to be bound than other jurors would. There should be no exemption from service as a juror. Almost all the wrong comes from these exemptions and the getting in our courts of men who are intellectually unqualified to serve as jurors. Now why should volunteer firemen be exempted? Why should persons in the service of the State be exempted? Don't they get paid just the same here as other employees do, as other servants, of individuals and corporations, do? Don't they get their salaries? Why shouldn't they be required to serve? The teachers in the public schools would make very good jurors.

Mr. Vanderlyn — Do volunteer firemen in villages and small cities get pay? You say they all get pay.

Mr. Quigg — No, they don't get pay, but I don't understand why they should be exempted.

Mr. Vanderlyn — May I ask one more question?

Mr. Quigg — They do get pay?

Mr. Vanderlyn — They do not get pay.

Mr. Quigg — Suppose they do not, why should they be exempted from jury duty? I don't understand it.

Mr. Vanderlyn — I don't assume that the speaker asked me that question, but, if he were to ask me, I would say that because

on occasions they get up in the middle of the night when you and other men are sleeping and they protect the property of the villages.

Mr. Quigg — No, I get up, too. I go to the assistance of my neighbor just the same as they do and I do not see why they should be exempted. Now, if practicing physicians and surgeons are to be exempted, why should not the pharmacists and the apothecary be exempted? Surely you all remember the famous case that was tried in England some years ago and was reported, I think, in 3 Dickens — I think it was 3 Dickens — the famous case of Bardell vs. Pickwick, where in summoning the jury an apothecary was called and asked to be excused because he was an apothecary. The little judge sternly refused and ordered him to sit, whereupon he remarked — and it has its bearing here: "I only wanted to let you know, me lud, that my shop is in charge of an errand boy. The prevailing impression on his mind is that syrup of senna means laudanum, and that epsom salts means oxalic acid." With that explanation, he took his seat. Of course, the report of the case does not show what consequences resulted. If you are going to excuse physicians, certainly you should excuse these men who translate the hieroglyphics of physicians into medicine for us to take. Now, I would exempt no one except soldiers and sailors of the United States. Then I would make a rule — and on that I am going to offer an amendment — to leave the matter in the discretion of the trial court. If a doctor has work to do, the court will excuse him. If he has an operation to perform, the court will excuse him. If you leave the matter in the discretion of the trial judges, we will get good juries, and that is where it ought to be left. Then after we have got the good jury we come to the judge, and the question of these commissioners comes in. Let us see what it is. The Appellate Division can appoint Supreme Court commissioners, and the Appellate Division is to fix their pay, not as Mr. Stanchfield said, by law, if by that he meant the act of the Legislature.

Mr. Stanchfield — I was speaking of the official referees.

Mr. Quigg — Their compensation is to be fixed by the Appellate Division and they are to be the commissioners and may be designated as referees. They are to serve in two functions; commissioners in condemnation proceedings, and then they are to be referees if the judges wish to appoint them. Well, if the judges wish to appoint them, they could appoint them without the suggestion of Judge Ingraham or Judge Jenks. Remember that these provisions are made only for those two departments. Beyond that, the section only provides that the Legislature may, in the other departments, erect this little judicial aristocracy, if it wishes

to. But in New York and in Brooklyn, these men are to be appointed by the Appellate Division. Now, of course, that means Judge Ingraham in New York, and it means Judge Jenks in Brooklyn; and, of course, they will be eminent lawyers, good lawyers, good men, able men. There is no doubt that, because those two great judgees will appoint that class of men. But, Mr. Chairman, they might happen to forget me. I want to be appointed. Every lawyer that practices at the Bar loves the honor and distinction of appointment as a referee. It is a splendid education for him. It sanctifies him to his service as a lawyer when he can act as a referee and find out for himself the functions of a judge. It is a good thing for every member of the Bar.

Mr. D. Nicoll — I call your attention to the fact that official referees or masters are prevented from practicing law.

Mr. Quigg — I know it.

Mr. D. Nicoll — You would not want to be appointed a master, would you?

Mr. Quigg — No, I would not want to be prevented from practicing my profession and nobody else should be and if you do prevent them from practicing then you have got to fix a very large salary for them. You have got to fix at least $10,000. Any lawyer in New York who cannot earn ten thousand is not worth his salt.

Mr. Marshall — Do you not know, Mr. Quigg, that the average earnings of a lawyer in the city of New York do not exceed $1,000 a year, and that there are many of them, very able lawyers, who are obliged to eke out an existence upon an income no greater than that?

Mr. Quigg — Not, I think, men who really practice. Not, I think, men who really attend to their work. I think that the attorneys who really do work and who are worth anything anyhow — oh, Mr. Marshall, men get their earnings according to what they are worth.

Mr. Marshall — They do?

Mr. Quigg — Yes, they do. Now, these men are prevented from practicing, and they have not the right to be appointed, you see. They are only to be appointed if the judge wants to appoint them. So the judge may name them, and they may never get appointed by any judge as commissioner or referee, and a salary is fixed for them and charged up against the city. Is that intelligent? Is it fair to the city? Now take this: They may have to "perform such other or further duties as may be devolved upon them by special order or rule of court by the appellate division." What does that mean? What other or further functions is this little group of judicial aristocrats to have over us practicing

attorneys? What does that mean? Now, in the first department the Appellate Division appoints these commissioners, who are also to be referees, you know, and have any other function that the court chooses to lay upon them, and the Appellate Division fixes their compensation and makes it a charge against the city of New York. Then, in the second judicial department, the Appellate Division does the same thing, and makes it a charge against the city of New York. Then this section says this queer thing: "The Legislature may at any time authorize the appointment of supreme court commissioners in the third and fourth judicial departments and in the counties in the second department not within the city of New York. Such commissioners shall be members of the bar of not less than ten years' standing." Well, are the commissioners in the first department to be members of the bar of ten years' standing? That expression "such commissioners" clearly refers to the commissioners that may be appointed in the third and fourth departments, if the Legislature authorizes it. It says: "They shall not practice as attorneys or counselors in any court of this State." Well, they have made the commissioners appointed in the first and second departments practice. This reference is clearly to the commissioners in the third and fourth departments that may be authorized. In that respect I suppose the Committee simply made a mistake, but if so it ought to be corrected.

Mr. Stanchfield — It wasn't a mistake, at all. It was put here deliberately, to govern the whole section.

Mr. Quigg — It does not do so. You cannot govern the whole section without using words that do it. You cannot make English out of barbarism of speech; that is what you have got there. Now, it says, "The official referees now in office" — that is, these judges who have been retired for age, many of whom ought to be continued on the bench, of course — they "are continued;" but they are continued without putting it into the Constitution. They are continued anyway. You don't have to do that. And then you go on with this pension scheme. And having provided a pension system — but remember that these commissioners are just as much referees as these *exeunt* judges. Then you provide that "No official referee shall be appointed, nor shall the Legislature hereafter create any similar office." I submit to you, Mr. Chairman, and to the Convention that that is not the way to provide a pension system for these judges. I agree that they ought to have a pension; I agree that it is not fair, but this is not the way to do it, for you see they get the money, they do not have to render any service, they do not render it any way unless a judge appoints them. No judge is compelled to appoint them; he can appoint

his friend after this is passed just the same as he can appoint his friend now. He does not have to appoint those official commissioners or referees. It is merely a suggestion to him from the Appellate Division. None the less the commissioners and referees get their salaries, fixed by the Appellate Division and a charge in both departments against the city of New York. I move, Mr. Chairman, to strike out section 8.

Mr. Unger — Mr. Chairman, I should hesitate to pit my judgment against the judgment of the Bar Association and these seventeen distinguished members of the Judiciary Committee were it not that as perhaps the youngest member of this Convention I feel that it is I that am to develop under this new Constitution and not any senescent body of lawyers. This proposal in my judgment is fraught with very vicious possibilities. It is designed indirectly to create a horde of legal janizaries of no use to the State and of real expense to my city of New York. I find no fault with the appointment of condemnation commissioners. If that is its sole purpose, its sole object, I am in hearty accord with it. But I do object to this insistent and apparent effort to defeat the principle of an elective judiciary, the great principle of letting the people choose who should be their own judges. If this measure were aimed to terminate and it did terminate the pernicious referee system I should utter no protest against it, but there is not a single line in this proposal aimed at the referee system. It simply transfers the patronage which the special term judge now possesses to this Appellate Division. It brings into being a Pretorian Guard of commissioners, the appointees of an all-powerful combination. Never in the history of this State was so much power vested in a single court.

Let me call your attention to one phase of the all-powerful court created by this judicial article, inadvertently perhaps. But nevertheless the fact remains that it should be discussed. It was only ten years ago that the people, upon the constitutional amendment being submitted to them, took away from the Appellate Division the right to appoint and designate the justices who sit in the trial terms of this court given them by the Constitution. As a result to-day that is simply in the statute law; and no such constitutional right exists in the Appellate Division. Yet we find, in section 2 of this Proposed Article, that the words "special term" are eliminated, so that the article reads that the Appellate Division justices shall have the power to appoint and designate the judges sitting both for trial and special terms, in the Constitution, even though that very proposition was submitted to the people and the people decided that the Appellate Division should not have that power by a vote of 280,000 to 130,000. The whole machinery

of justice in this State will be controlled by the executive of this State; and there are a good many of us in this body who are opposed to such centralization of power. He designates the Appellate Division justices; and, by a curious coincidence, the Committee on Governor and Other State Officers have recommended that his term be a term of four years. The Appellate Division justices are appointed by the Governor for a term of five years. So that means that each Governor elected for a term of four years is to be able to select an Appellate Division which is to have this tremendous power of appointing these commissioners. The discretion of appointment vests in the Appellate Division. They fix the salaries. There is no limit upon the amount they can fix. Not only is the political control of the State to be placed in the hands of the Governor; not only the fiscal control of the State, as evidenced by the budget plan; but the entire machinery of justice will be placed in the hands of this all powerful and autocratic Governor. I am with those distinguished members of this body who would centralize responsibility; but I will only do that provided it will not centralize power. Even Venezuela, in my humble judgment, is preferable to Russia.

Mr. Steinbrink — As one of the barbarians who inflicted the provisions of this section on the Convention I feel that I may say just a word or two in its support. The very object of this provision is not to load on the city of New York an additional expense, but to take from the city of New York some of the expense which has been loaded upon it through patronage bestowed by men on the bench.

Mr. Unger — How do you take away from the city of New York the expense of patronage bestowed by justices of special terms if you expressly in this Constitution transfer to the Appellate Division that very power and say that it shall be an expense to the city of New York?

Mr. Steinbrink — Now, if the gentlemen will be calm for about two moments, I will tell him. In the city of New York to-day there are 220 condemnation commissions, each of which has three members, which is 660 commissioners, sometimes averaging about two sessions a week; that is, 1,320, and being paid ten dollars a session when the sessions average less than thirty-five minutes apiece; in other words, an average of $13,200 for the expense alone of the condemnation commissions.

Mr. Unger — I'll promise not to interrupt you any further, Mr. Steinbrink. I agree with you, entirely, and I said that I found no fault with the proposition of appointing condemnation commissioners, but how does that affect this proposition contained in section 8, " and who also may respectively be designated

as referees whenever issues are properly referred for determination or report, and who shall perform such other or further duty as may be devolved upon them by special order or rule of court by the Appellate Division"?

Mr. Steinbrink — In this way, when the taxpayer of the city of New York to-day pays his taxes he pays all that he should be called upon to pay in order that his lawsuit and his litigation may be heard. Instead of that to-day, when a matter that is contested, involving a long account, or any one of a hundred things occurs in court, the first thing that occurs and frequently occurs to the judge on the bench is to favor somebody recommended by some political machine and to send a reference to him in order that he may hear and determine, or hear and report, and when that reference is concluded, the prevailing party at litigation before he takes up the referee's report must pay the expense of the litigation in addition.

Mr. Unger — Mr. Chairman, will the gentleman yield?

Mr. Steinbrink — No, I think I have answered the two main objections made by the gentleman from New York, and now I will continue. Now, this will provide a body of men appointed by the Appellate Division in each department, and if the departments outside the city of New York desire it, they may have it, to all of whom may be referred, not alone these condemnation proceedings but also any matter that is referable under the rules and practices. Now, this is not at all meant to create a pension system, or a favorite class, because I fear that the gentleman from Columbia does not know what has taken place in the city of New York since 1895, and this is the vice at which this proposal is aimed.

Mr. Quigg — I have been living since then, Mr. Steinbrink.

Mr. Steinbrink — I appreciate that. Since 1895, the Legislature has created this so-called class of official referees and they have carried it so far that when the occasion arose in the city of New York, the Legislature was asked to again create classes of official referees made up, not of supreme court justices or justices of the Court of Appeals, but of retired city court justices, and the act then, as passed, fitted only one city court judge from the city of New York; and when a little later another candidate in the city of New York had been defeated, the Legislature was requested to again amend that act to cut down the term of service from twenty-five years, which fitted only the one man, to twenty years,— in order to fit man number two. And then a few years later when in a political revolution two other men were defeated as municipal court judges, the Legislature was again asked, and they responded, and they again amended the act and created another class of official referee to which was eligible former

municipal court justices; and it is to stop official referees from being created out of the inferior courts that this proposal in part comes.

Mr. Quigg — Is it not true that these commissioners and referees, after being named by the Appellate Division, may or may not be appointed to any service, according as the judges before whom the cases are, may desire? It is purely permissive; is not that true?

Mr. Steinbrink — I don't get your question.

Mr. Quigg — Let me say it again. Is it not true that the Appellate Division may name these commissioners, any number it chooses; fix their salaries, any salary it chooses; charge that salary against the city of New York; and then not one of them, not a single one of them may be appointed to serve; is not that true?

Mr. Steinbrink — Why, the moment they are appointed, they are appointed to serve.

Mr. Quigg — I know, but never be assigned to a case, never do any work?

Mr. Steinbrink — Well, that, Mr. Quigg, assumes that the judges of the supreme court are not going to do their duty.

Mr. Quigg — Now, let me ask this.

Mr. Steinbrink — If you want to proceed on that assumption —

Mr. Quigg — Then, they are going to appoint these men, you say?

Mr. Steinbrink — Yes, sir.

Mr. Quigg — Then why don't you say so in the act and require it, that the appointment be limited to those men?

Mr. Steinbrink — Limited to which men?

Mr. Quigg — Limited to the men appointed by the Appellate Division, Mr. Steinbrink.

Mr. Steinbrink — For this reason, Mr. Quigg, that there is nothing in this proposal which prohibits two lawyers in a litigation from agreeing on a referee, if they so desire.

Mr. Quigg — No, but is there anything that prohibits a judge from appointing any person he chooses? He does not have to appoint these men.

Mr. Steinbrink — Any lawyer of ten years' standing may be appointed official referee, to whom may be referred any matter or thing referable under the rules or practice.

Mr. Quigg — Mr. Steinbrink, you don't take me.

Mr. Steinbrink — I do. You mean, Mr. Quigg, that in addition to the referees, or commissioners who are appointed, that the judges may still disregard it and send these matters to other men.

Mr. Quigg — There seems to be that choice.

Mr. Steinbrink — I say again, that is assuming that the Supreme Court judges are not going to avail themselves of the machinery that is provided.

Mr. Quigg — Then, why don't you tell them to and save the city this great expense of salaries, fixed salaries for people who may never be appointed to the trial of causes.

Mr. Steinbrink — Because the seventeen men who are on the Judiciary Committee, nine of whom come from the city of New York, are willing to assume that Supreme Court judges are going to respond to public sentiment and to the sentiment that is expressed in this provision of this Constitution.

Mr. Quigg — I know, Mr. Steinbrink, but it is what all of us must do without respect to the 17 members of that Committee, it is what we think we ought to do and these questions are asked for that purpose.

Mr. Steinbrink — You cannot define in any section of the Constitution every duty that the officer should perform. If you did, you would have a Constitution of ten or twelve volumes, instead of a Constitution of fundamental declaration. Now, these commissioners can render, will render all of the service that is now rendered by the commissioners in condemnation. In addition to that, it will put an end to the practice of asking either the prevailing litigant at the commencement of the litigation to pay, or the losing litigant at the end of the litigation to pay the fees in order that he may obtain justice.

Mr. Griffin — When I first noticed this section 8 in the proposal of the Judiciary Committee I thought that it was an attempt to put into the Constitution the suggestion of the Phi Delta Phi, which contemplated the appointment of Supreme Court Commissioners to occupy the same place in our judicial system as they do in England and as I believe they are doing now in New Jersey; Supreme Court commissioners who would sit and hear all the preliminary motions connected with the pleadings, the setting out of the proofs, the marking and getting ready of exhibits for trial, so that when the parties came into court upon the trial day, all preliminary motions tending toward delay would have been disposed of. But, upon a careful examination of this section, I find to my surprise that it is no more nor less than continuing the old vicious system of referees under a new name. You call them Supreme Court commissioners and what shall they do? Not one thing more than the old referees did, or the street commissioners in the city of New York did. Now, what is there new in this section? Simply one thing, that they are appointed by the chief judge of the Appellate Division of the First and the Second

Department. In other words, you change the source of the patronage, the fount from which it emanates. Heretofore, official referees and Supreme Court commissioners in street opening proceedings have been appointed by the Supreme Court judges in the respective departments while sitting in special term. It was a nice pleasant opportunity for the judges to reward their friends, their political henchmen, and the members of their families; and it is true a vicious system has grown up in the city of New York and presumably in Brooklyn arising out of the opportunities which are thus given to the judges to reward their friends and relatives.

If you take up the Law Journal of the city of New York, day by day you will find the same names recurring in the appointments of these judges, but these men who are the beneficiaries of this patronage are not appointed by the same judge. You find that different judges when they come to sit in special term designate the same men, which leads to the inquiry, what is the subterranean influence which leads the direction of this patronage into the hands of these men? You find relatives appointed not by the judge himself, but another judge. That judge when he comes to special term appoints the other judge's relative, and there you have continually and in a kaleidoscopic manner the beneficiaries of a stellar system changing without any material change and without any improvement in the administration of the law business in the city of New York. The referee system in the city of New York has come to be a curse and it ought to be eliminated and I will go as far as any man in helping with the elimination of that practice. It was said here yesterday, or perhaps this morning, that the fees of these referees are not even settled by the Code of Civil Procedure. If you go before a referee the first thing done, the first entry on the minutes, is what will be the fee of the referee. Now the gentlemen will probably agree to $25 a sitting, and a sitting consists of one hour. They proceed with the hearing and just about the time when the lawyers are warming up to the trial of their case and getting in shape to present their proofs in a proper way, the referee looks at his diary and says he has another reference on at $25 an hour. You ask him to set it down for the morning of another day. No, "I have got such-and-such a reference on." You ask him to set it down for the afternoon. No; such-and-such a reference is on at that time. This is a very profitable business, but it is a bad business and ought to be eliminated. Now, I approve of the proposition of doing away with the official referees in the city of New York. Now, how has the Judiciary Committee carried out the change? They have made no change, as I said, except in the

appointing power. I have another grievance against this section, and lest the members of this Convention may imagine that I am hasty in criticism, and should not take the liberty to criticize the handiwork of such eminent members of the Bar, I would call your attention to page 29 of this proposed act, and ask you to consider for yourselves with what care and deliberation this proposal must have been prepared when an error such as that which I will now point out was permitted to creep into it. In the discussion yesterday as to the right to appeal from judgments and determinations of the city court from the appellate term to the Appellate Division the functions of the city court were dwelt upon and most of the members from the other sections of the State have at least some notion as to what the city court is. Now the city court was originally the marine court. Its jurisdiction applied and now applies only to the territory within the old boundaries of the city of New York, namely the county of New York, and, since the creation of Bronx county, both of those counties combined. Now, on page 28, section 21, this is the proposal of the Judiciary Committee: "The city court of the city of New York is continued and from and after the first day of January, one thousand nine hundred and seventeen, it shall have the same jurisdiction and power throughout the city of New York, under the name of the city court of New York, as it now possesses within the county of New York." It has jurisdiction within the county of the Bronx. Why did not the Committee remember that?

Mr. Wickersham — Mr. Chairman, will the gentleman yield? Is the gentleman debating a section we have not yet come to?

Mr. Griffin — I merely mention this; General, as preliminary to a general criticism which I desire to administer to the Judiciary Committee as to the way in which this was prepared.

Mr. Wickersham — Mr. Chairman, I think the Committee will have to stand it.

Mr. Griffin — The point I am most solicitous about is this: On page 11 of the bill, beginning with line 16, the article proceeds: "In the First Judicial Department the Appellate Division from time to time may appoint such commissioners as it deems necessary" — now going down to line 19, the Second Department — "In the Second Judicial Department the Appellate Division from time to time may appoint for each of the counties of that Department within the city of New York such Commissioners as it deems necessary." Now, may I ask, was this an inadvertence? Was this an error? Why was this distinction made? I ask General Wickersham now if he can inform me.

Mr. Stanchfield — The answer is because there are counties in the city of New York in the Second Department and counties in the Second Department not in the city of New York.

Mr. Griffin — Yes, but how many counties in the Second Department are in the city of New York? Just three; that is all. There are ten counties in the Second Department but only three of them are embraced in the city of New York. In the First Department we have two counties. Now I want to know, as the representative of a county of this State, the third largest county of the State, with a constituency of over 600,000 people, why it is that the county of Bronx is utterly eliminated. I have already shown you on page 28 of the proposed bill that the Committee did not know that Bronx county was a part of the jurisdiction of the city court, and I imagine that perhaps it was an inadvertence; but on page 11 they provide for the appointment of these Commissioners from all of the counties in the Second Department, and only generally in the First Department. Now I guess you can all imagine what is going to happen. In the Second Department Chief Justice Jenks will no doubt distribute the patronage for the appointment of these Commissioners, if they are ever to be appointed. I hope we will not adopt this section, but if they are to be appointed, he will give one to Kings, and one to Queens and one to Richmond. But when it comes to the First Department, unless there are some particular lawyers in the Bronx that have particular interest with the First Department chief, I am afraid that we will stand very little show of obtaining any consideration.

Mr. Quigg — Well, but you know that under this section the Appellate Division may appoint as many as it pleases! Surely it will please to appoint enough to accommodate the Bronx.

Mr. Griffin — That is only an assumption.

Mr. Quigg — There is no limit on the number of persons it may appoint and fix salaries for.

Mr. Griffin — Mr. Quigg, if your question has any merit, and I assume that you believe it has, will you kindly explain why a different method is provided in the second department? The chief justice of the Second Department may appoint as many commissioners as he pleases, and presumably he will appoint as many as will please all the respective counties. But if he will do that without a provision providing for appointment from separate counties, why did you put a check on the Second Department and omit it from the First?

Mr. Quigg — I don't know.

Mr. Griffin — No, I don't think you do. Now, Mr. Chairman, I offer an amendment which will correct this inequality in the disposition of this patronage. I offer it in the hope, as I said before, that this section will not be carried either with the amendment or without it. I believe this section ought not to be adopted.

The Chairman — Have you the amendment ready?

Mr. Griffin — I have it here in my hand. I hope this section will be referred back to the Committee whence it came, with instructions to hear arguments from those that are most interested and most familiar with the administration of justice in the city of New York.

The Chairman — The gentleman is not making a motion to recommit?

Mr. Griffin — Not at this time. I am offering an amendment.

The Secretary — By Mr. Griffin, page 11, line 17, after the word "appoint" insert the words "for each of the counties in that department." Page 11, line 19, after the word "the" strike out the words "city of New York" and insert the words "respective counties in said department." Page 11, line 24, after the first "the" strike out the words "city of New York" and insert the words "respective counties in said department." Page 12, line 6, after the word "by" strike out the word "whom" and insert the word "which."

Mr. Griffin — Mr. Chairman, I withdraw that last amendment. It is purely a verbal change.

The Chairman — The last amendment is withdrawn.

Mr. Griffin — With respect to the elimination of the words "city of New York" on lines 19 and 24, I simply desire to say this: These commissioners to be appointed are to have salaries designated by the Appellate Division, but this proposal provides that those salaries shall be put as a burden on the entire city of New York. Now, I have change that, or suggested the change that the Supreme Court commissioners shall have their salaries put as a burden on the respective counties in said department. Now, you take the Supreme Court commissioners appointed in Kings, Queens and Richmond: their expenses, their salaries are a burden upon the entire city of New York. The Supreme Court commissioners appointed in the county of New York have their salaries put as a burden upon the entire city of New York, according to the bill. Bronx county may be utterly eliminated with respect to the appointment of commissioners and yet have to bear its part of the burden as long as the burden is put upon the entire city of New York. I think if these commissioners are going to be appointed, their salaries ought to be fixed as a burden upon the respective counties whence they come.

Mr. C. H. Young — I shall address myself merely to the question of official referees, and meet, so far as I may, such criticism as I have heard up to this time on that subject. We have now some eight or ten official referees appointed under various acts of the Legislature. Those acts are different in their terms, and the

referees so appointed are under the control of no court or body of men who may give them efficiency or make them work. This plan looks to the future, so that the only system of official referees which may arise will be those which come under this provision of the Constitution. This provision gives the court supervision over the amount of work they shall do. It has been thought, and was thought by the committee, that, so long as the Legislature retained the power to create official referees, they would go on from time to time, and each candidate for official referee would get a bill through that provided for his particular situation, and would not provide for the general situation. This amendment, so far as official referees are concerned, therefore, only makes a system which in the future must be uniform, which must be under the control either of the Court of Appeals or the Appellate Division judges in the department and which gives to those judges the discretion to appoint these official referees, and it also gives to these judges the power to drop these official referees "out of the window" if they are no longer able to do their duty. Now we may say what we please about the system of official referees that has obtained. We may approve or disapprove of that system, but we cannot, if we are going to get them, whether we want them or not, by legislative action — we can do no better, than we have attempted to do here, which is to put them under the control of the courts that appoint them and fix it so that the courts can relieve them from their duty when they are no longer able to do it or when they are delinquent in their duty.

Mr. Quigg — This act does say they shall have a salary, doesn't it?

Mr. C. H. Young — It does.

Mr. Quigg — They get that anyway. Is there anything in the act which says they shall do any work?

Mr. C. H. Young — There is nothing in the act, in language, which says they shall do any work, but any court that appoints them will undoubtedly look out for the work that is done by those whom it appoints to office.

Mr. Quigg — They may or may not earn their salaries?

Mr. C. H. Young — I believe that the Supreme Court will make them earn their salaries or drop them, as I have expressed it out of the window. At any rate, I hope so.

Mr. Olcott — Is there anything to keep the special terms from sending to non-official referees references that come to them on referable issues?

Mr. C. H. Young — So far as I can see, there is nothing in this act which interferes with the court sending to other than these official referees any business that they may choose, whether by consent or otherwise.

Mr. Olcott — Yes.

Mr. C. H. Young — There was not in contemplation, so far as I can see, anything you suggest by the question you ask, that that should be driven out. But it is in contemplation, and was by this Committee, that those people, who cannot afford the expense of a reference in an action which would involve an accounting, can go to one of these official referees and have their case tried properly and fairly without any burden of expense placed upon them.

Mr. Olcott — That is what I wanted to see accomplished. You say that was in contemplation.

Mr. Sears — Can't it be provided in the civil practice rules that all compulsory references shall be sent to the official referees?

Mr. Young — Could it not be provided? I should think it could.

Mr. Sears —And if that were done in that way, there would only be references to other referees by consent of the parties.

Mr. Young — By consent of the parties.

Mr. Olcott — That answers my question, and if that is contemplated, it seems to remove one of the objections.

Mr. Wickersham — Mr. Chairman, I offer this amendment.

The Chairman — The Secretary will read the amendment offered by Mr. Wickersham.

The Secretary — By Mr. Wickersham. Page 11, line 15, at the end of line 15, insert the words "or by the civil practice rules." Page 12, lines 19 and 20, strike out the words, "Until the Legislature shall otherwise provide," and insert instead the words "until otherwise provided by the civil practice rules." In line 22, after the word "legislature", insert the words "or the civil practice rules".

Mr. Lindsay — This act or section applies more particularly to New York, perhaps. It does not affect to any great degree the western part of the State; and yet I apprehend it is so drawn that it can be made applicable at any time to the eighth, or any other judicial district Now, I had hoped, notwithstanding the fact that I voted against the proposition against special privilege, that direct special privilege would not appear in the Constitution. In other words, I had hoped that we would get a Constitution which would not bear upon its face the proposition of trying to make provision for any particular judges or particular people. The explanation of this provision on page 12, beginning with line 7 and running to line 20, by the gentleman from New York, Mr. Stanchfield, indicates that it was intended as a special privilege to take care of certain retired judges, and it bears upon its face such restrictions as to age, as to manner of appointment, as to the number of years served, that I assume a resident of New York, well

acquainted with the judges there, could just about put his finger on the people who are going to be appointed these referees or commissioners. It reminds me of a general law which would be intended to apply to the County of Erie, and should state that any county bordering upon a lake, and upon a river so many miles long, and having an island in the center of the river, belonging to the county, should have certain laws. Now why was it necessary that the judge in this court of record should have served twenty years, just twenty years, while in the Supreme Court he should serve fourteen years? Why not if he served twelve years as a member of the Supreme Court? Why shouldn't it apply to him just as much as to one who served a full term of fourteen years, if he was sixty years of age?

Mr. Brackett — May I inquire who the particular man is you want to get in?

Mr. Lindsay — I am not trying to get anyone in. This as it now stands does not apply to anyone. But what I object to is that page strikes any lawyer or person reading it as intended to make jobs for some particular class of persons. And it should not be that way in the Constitution. If you have a provision for retired justices, simply make the provision that any honorably retired justice of the Supreme Court or of the Court of Appeals may be appointed as an official referee, and not specify as to the color of his hair, the cut of his garments, or anything of that sort, calculated to exclude certain persons and put others in, and then say that it a part of the Constitution of the State of New York. Now, Mr. Chairman, there is another objection to this which is wholly a matter of construction. It does not say where these commissioners or official referees shall reside. There is a very peculiar provision in here showing the exceptional character of it still more. When they come to appointing referees from the Court of Appeals, they could not trust that to the Appellate Division of the department which was to appoint him, but they must go to the Court of Appeals and have it make the appointment in some department solely because the man is an ex-judge of the Court of Appeals. Now if a judge of the Court of Appeals should be retired and he lives in Albany, and this law should be made to apply to us in the west part of the State, Buffalo for instance, is there anything in this law to prevent the Court of Appeals assigning him to these duties in the city of New York, or the city of Buffalo? Is there anything to prevent appointing any official referee from any part of the State to the city of New York if he is a retired judge? I cannot find it, there may be something in the public officers law which controls it, but I doubt it. But my main objection to this provision as it now

stands is the objection raised by Mr. Quigg. There is not a thing in the provision, it is admitted, to make it compulsory. I go down to the city of New York, at rare intervals, sometimes I have a case there, I had a long account a while ago that perhaps it would have been necessary if the matter had not been settled, to send to a referee. Now I will go before a judge there and the other party will make a motion for a reference. The judge says here is my friend So-and-So,— refer it to him. I have got to put up the money for that trial. Somebody else comes in and the Court says I will refer that to the official referee, and it does not cost him anything, and there is nothing in this provision to prevent the courts from doing that. Now why should that situation be placed in the Constitution of this State, a matter not only resulting in special privilege, but a rank injustice, and there is no lawyer can control it when the thing goes into operation. Now another thing. It has been stated, as an antidote to that, that the courts would undoubtedly see that that matter was all corrected. Why — Mr. Steinbrink said if I recollect rightly — won't you have the same courts after this goes into effect as you have had before? You have had to come to this Convention and get the most drastic provisions because your courts would not do what was right. That is why you are passing this. You say the courts have abused the law in New York city and they have made these appointments. Now you enact something, you have something in the Constitution for the same courts and you do not make it obligatory upon them. Do you suppose there is going to be any difference afterwards? I say this section should never be passed unless it is made obligatory upon those referees.

Mr. Leggett — The class of persons as official referees to whom it is asked this provision shall apply is a curious class of persons. They are those who either actively or passively have been turned out of office by the people of the State of New York. Is not that so? Either they have gone out of office by reason of the age limit, which is a part of the Constitution of the State, adopted by the people, which says that no man shall continue as a judicial officer or justice after having attained the age of seventy years, or, if they are younger than that, the people have indicated possibly you may say in a negative way, that they do not want them for judges or justices any longer because they have failed to re-elect them. Now this provision of the Constitution undertakes to get around the will of the people by permitting their former associates in office, who, naturally, have a kindly feeling for them, to make them salaried judicial officers of the State of New York again. Is not that a kind of curious provision to put in the form of a constitution? It is plain enough, I think, to every man, that the

purport, the intention, the real intention here, is not advantage to the people of the State of New York but to give to these gentlemen who are somewhat along in years what is virtually a pension. Now personally I have the feeling that they are not any more entitled to a pension than any other aged and worthy and respectable gentlemen. A few days ago this Convention by a very large vote refused to prohibit the Legislature from granting privileges. I want to see whether this Convention will vote to confer the granting of privileges on the judicial department, and for that reason I offer the following amendment.

The Secretary — By Mr. Leggett: To amend Article VI, Section 8, as follows: Strike out all of line 6 after the word "appointed" and all of lines 8 to 24 inclusive; in line 25 strike out the words "and official referees".

Mr. Olcott — Having asked a question a few moments ago implying a criticism, I desire to say that it appearing that the civil rules of practice have charge of the matter and may make compulsory reference of a poor man's litigation or anybody's litigation who wants to avail himself of it, to the official referees, I think this a good plan.

Mr. Quigg — In other words you are willing that the judges of the Appellate Division who appoint these referees should compel all references to be made to them?

Mr. Olcott — Yes. I believe that, although that creates practically an appointive sub-judiciary, it is better than the enormous expense for references which poor men often find prohibitive against bringing action.

Mr. Quigg — Don't you think a better way would be to elect enough judges to try our cases instead of having this body of aristocrats between the Bar and the courts?

Mr. Olcott — That will never be done so as to avoid the necessity of having referees and I would rather have those high-class officials referees than referees as have been described who have been appointed from the friends and relatives of judges upon the bench.

Mr. Quigg — Don't you suppose that these appointments will be made from among the friends and relatives of those who appoint them?

Mr. Olcott — Perhaps, but I think they will be a higher class of men than the ordinary class of men at present. I don't think this plan is perfection, but I think it is a long step in advance, especially for poor plaintiffs.

Mr. Unger — I want, very differentially, Judge Olcott, to ask one question to satisfy my own mind. Suppose Mr. Steinbrink and myself have hit upon the proposition that this will be a great

saving to litigants. Now I cannot see, and nothing that has yet been said has been able to convince me, that the man who brings the suit should not bear the burden of it. I want to know why it is right, and just and proper that I, who have absolutely nothing to do with the suit that Mr. Litigant intends to bring should be compelled to contribute towards the expense of it.

Mr. Olcott — For the same reason that as a taxpayer you have to contribute toward the judiciary. Civilization would not be any good if that were not so.

Mr. Unger — Why not appoint enough judges?

Mr. Olcott — I just answered that; I do not believe you will ever get the people to elect the vast number of judges that will be necessary to provide here to do way with the interposition of referees.

Mr. Unger — Would not this result, instead of a saving of money, instead of the saving of expense, in simply shifting the burden from the litigant to the taxpayer?

Mr. Olcott — I think it would be unappreciable in the latter instance and often prohibitive in the former.

Mr. Shipman — Is it understood that these commissioners when appointed will work during the summer time.

Mr. Olcott — I don't know.

Mr. Shipman — Well, Mr. Chairman, there is no bank, there is no factory, there is no institution, there is no common carrier that does not work the year 'round. I mean to say that the delay in our litigation and the cost of it is because nothing is done between June and October.

Mr. Olcott — Well, you would not put the requirement that there should be no vacations into the Constitution, would you?

Mr. Shipman — Not at all; but I would not provide either for a three months' vacation.

Mr. Olcott — Well, the civil practice rules will, perhaps, for that.

Mr. Shipman — If they are going to stop all work between June and October we simply have one quarter of the year cut out.

Mr. Olcott — One moment — you ask a question and then do not wait for an answer. Don't you know official referees are working in the summer in New York city. Don't you know that Judge Gildersleeve and Judge Freedman by no means shut up their rooms and depart from New York until October?

Mr. Shipman — I know that some do not; but if we are to inaugurate a board of official commissioners to act as referees I want to know if we cannot expect them to devote the greater part of the year to their business because if they get their cases into shape the judges can take care of them easily in October.

Mr. Olcott — That of course is true. I believe the civil practice rules will take care of that.

Mr. Wickersham — Does the gentleman think that the difficulty is entirely with the courts? Is it not quite as much with the lawyers?

Mr. Olcott — It is when I am the lawyer.

Mr. Wickersham — Has the gentleman not constantly experienced difficulty in getting counsel on the other side to proceed during the summer months?

Mr. Olcott — I have experienced a worse difficulty than that. I have experienced difficulty in getting counsel on my own side to go on.

Mr. Wickersham — Is not the court often far more willing than the counsel to proceed?

Mr. Olcott — I think that is so; I think counsel is the fellow who often wants to stop his arduous work.

Mr. Stowell — Mr. Chairman, I would like a little information from the gentleman who has so ably presented this section to the Convention, if he consents, and the first question I want to ask is, how many public referees are there in the First Department? I am referring now to the second subdivision of this article.

Mr. Stanchfield — I think there are four: Judges Gildersleeve, Prior, Lawrence and Freedman.

Mr. Stowell — And how many official referees are there in the Second Department?

Mr. Stanchfield — Two.

Mr. Stowell — And how many are there in the Third and Fourth Departments, if any?

Mr. Stanchfield — Judge Haight of Buffalo and Judge Vann of Syracuse are the only two, at the moment, that I know are acting.

Mr. Stowell — Is it not the fact that the plan which you have devised here in this second subdivision is practically a plan to pension judges, and, in effect, do away with the mandate of the people of this State, who, twenty years ago, said that pensions of judges should not exist?

Mr. Stanchfield — That is not at all the view of the Committee. We look upon the appointment of these official referees as being a wise and a necessary adjunct in the administration of justice. If the gentleman will recall, I expressly stated in my opening presentation that we disliked to use the word "pension" and that we merely meant to care for these people because they were a necessary part of the general scheme for the administration of justice in this State. Now let me, upon that subject, call your attention to a provision in the statutes of the United States, which runs to

this effect: When any judge of any court of the United States leaves the bench because he has arrived at the age of seventy years, and who has served at least ten years continuously, he shall, during the residue of his natural life, receive the salary which was payable at the time of his retirement. In the State of Massachusetts they pay the judges upon their retirement three-quarters of their salary. In the State of Pennsylvania they pay them upon their retirement one-half of their salary. In each of these states there is a different tenure of office provided as a condition precedent to the payment of those salaries when they leave the bench; and in no one of these jurisdictions, either in the United States at large, or in the several states of the Union, is it put upon the ground of being a pension, but rather upon the theory that these men, with their long experience upon the bench, serving litigants without pay, will serve a useful and beneficent purpose in the general administration of justice.

Mr. Stowell — Now, Mr. Chairman, the statement that the gentleman makes as to the practice of the United States Government, and of the other states in this Union does not appeal to me. I do not believe that judges are a sacred class. We had pensions for judges down to 1894, and then the people said decidedly there should not be any more pensions. I cannot help feeling, I cannot help thinking that this plan is only — I do not say that is the only purpose of it, but it is, in effect, a plan to give judges of this State pensions indirectly, under other names. Now, you speak of withdrawing from active pursuits and duties, and therefore when they get through serving fourteen or twenty-eight years, as the case may be, they must go back and build up a practice or they ought to have a pension. That is the thought; I will not say those are the exact words. Now, my experience in life is this, that if a man gets a fair salary and he cannot save enough out of it so that in his old age he can care for himself, he is not a proper man to occupy that position. We do not believe, as one of the other speakers said, at least I do not, that we should have special classes in this country. Now, you speak of the salaries of the judges. My observation is this, that the average judge — I speak of the upstate judges, because I know more about them — who now gets ten thousand dollars a year is only too glad to get a chance to take that position at that salary. I venture to say that not more than one out of twenty of them before going on the bench earned five thousand dollars a year. That argument does not appeal to me, and it does not harmonize with Mr. Marshall's statement that hundreds of lawyers in the city of New York do not earn a thousand dollars a year. As I said before, I do not think judges are a sacred class. I say, as a result of my observations, that there is

not another organization in the State of New York, nor has there been for the last fifteen or twenty years, more efficient than the supreme court judges of the State of New York in building up their own salaries. A few years ago the salaries were $6,000 a year. I do not want to use the word "banded", but they did use their influence in different ways through the popular lawyers of the county who had a pull with the Legislators, and they finally raised the salary from $6,000 until at the present time it is $10,000. I am not quarreling with that salary. I believe judges should be well paid, but I do not believe, after they get through, they should be pensioned. I hope the amendment proposed by Mr. Leggett will prevail. I say further that I do not believe the people of this State, when this proposal is fairly laid before them and they understand that it is, in effect a proposition to pension judges, will approve of this section, at least.

Mr. Unger — I want to say one final word upon this proposition and then I will subside. The one thing that I have been fighting for in this Convention, and that I will continue to fight for, is the elective system of judges; and, in addition to that, the deprivation of any centralized control that a single official may have. This proposal will accomplish both of those purposes, that is, both of the purposes to which I am opposed. It provides, as Judge Olcott has so admirably said, a sort of appointive, brevet judiciary. In addition to that, as I endeavored to point out before, it gives the Governor the entire, absolute, unqualified control of the judicial machinery of this State — a thing unprecedented; something that has never occurred and should never occur as long as any man in this Convention is able to raise his voice against it. I appreciate the admirable purposes which prompted the gentlemen on the Judiciary Committee to provide for the creation of a number of condemnation comissioners to end what has rapidly been becoming a sore spot in the city of New York, and I find no fault with that provision of this amendment. The part that I do object to, the part that I call upon this Convention to defeat, is the portion of the amendment which gives to these commissioners, who are without limit, whose salaries can be fixed indirectly by this central Governor at any amount that he sees fit — I do object to giving those commissioners the power to sit in judgment upon the people of this State.

Mr. Deyo — I feel that it would be a very great mistake if the provision submitted by the Committee should be adopted by this Convention. I believe it is unwise. The Committee has linked together a provision that is eminently wise, with reference to condemnation commissioners, with another provision that ought not to be coupled with it. I think we are running a great risk, a

grave danger. To be sure, I am not primarily interested in the matter of official referees down in the city of New York but I am interested in what the final estimate of the people will be in respect to the work we are doing here in this Convention. This proposes to continue the official referees. Those referees now are appointed for life. It does not make any difference whether they perform any public function or not. It is nothing more or less than a system of pensioning certain classes of officials — ex-officials. That may be wise or it may be unwise. I am not arguing on that but I do say it would be unwise to insert such a provision in the fundamental law of the State where the people have nothing whatever to say about it except to accept or reject the entire proposition. I do think there should be condemnation commissioners. I think those commissioners should be appointed not only in the first and second departments but in the other departments of the State. But, so far as the embodiment in the fundamental law of official referees as now established by statute, I think it is unwise. If we want to pension the ex-judges let us do it immediately and directly.

I was very much in sympathy with some features of the proposition which I helped to vote down the other day, proposed by Delegate Barnes, but here you are embodying in the Constitution a provision granting to a person who has held a judicial position a certain compensation for life. It is not a question of whether he performs any services or not. He is to receive the same compensation whether he performs any service or not, and that seems to me unwise. It seems to me that it is creating a special class, a privileged class, which, while it may be wise to do it by statute, or it may be unwise, ought not to be embodied in the fundamental law of this State. I fully agree with what Delegate Stowell has said. If there is any group of men, if there are any officials in our public service who excel, par excellence, any other group of public officials in the public service in reaching out for additional compensation and emoluments through the Legislature of this State, it is the judicial branch. Now we may as well look the thing squarely in the face. That is true and every man who has served in the Legislature of the State will agree with what I say. I think, Mr. Chairman, that this section as it now stands, ought not to receive the approval of this Committee.

Mr. Baldwin — I desire to offer a slight amendment to this article, and in doing so I feel like apologizing to the Committee who have done such excellent work. I believe in framing this section they have done a very admirable work, on the whole, but I think it is open to criticisms, some of which have been expressed here. You are creating positions, you are defining the duties, but you not curing the evil which every one recognizes has existed so

long, especially in the metropolitan district. Now reference has been made to the question of favoritism in the appointment of referees. We need not look at the records; all we need to do is to go back in our memory to the scanning of the pages of the law journals to determine who the favorites are in the matter of patronage, with the distribution of which the justice sitting at special term has to do. Now it seems to me that if we are to have official referees, they ought to do the duties and ought to perform the work, and so the amendment that I would suggest is that, simply in those departments where there are supreme court commissioners and official referees, no reference shall be made to other than a supreme court commissioner or official referee without the consent of all parties to the litigation.

Mr. Wickersham — Mr. Baldwin, the Committee gave very careful consideration to that subject. Having regard to the immense volume of litigation in New York, it concluded that to put in any such provision as that would possibly break down the whole system or lead to the appointment of such an enormous number of commissioners as in itself to break down the system. Therefore, I suggested this morning an amendment, leaving it to the civil practice rules, believing the judges could deal with this system gradually as it developed. If it should prove satisfactory, it could be extended from time to time and make it comprehensive if they felt it advisable. I regard this sugestion of Mr. Baldwin's as somewhat — and I am sure he has not given the same consideration to it as the Committee has been called upon to do — dangerous, because it would lead possibly to the destruction of the whole system.

Mr. Quigg — Mr. Wickersham, have you considered how many of these commissioners and referees these judges are going to have a chance to appoint?

Mr. Wickersham — Mr. Quigg, we could not figure upon how many. We discussed that somewhat with the presiding justice of the Supreme Court in the first department. His estimate was offhand. I thought it was somewhat lower than would be required. He thought not more than a dozen at the outside would be required, but admitted that it was somewhat experimental and I would not hazard a guess; but if it were made obligatory to send all referable issues to these commissioners, unless by unanimous consent, I feel we should run great danger of breaking down the system until it was well established. I think there is no greater reform in the administration of justice in New York that has been suggested than the appointment of these standing commissioners under the operation of the practice rules. But I don't want to see it subjected to such an undue strain at the outset as to make it impracticable and to take from it the value we ascribe to it.

Mr. Baldwin — It is the very object of my amendment to break down the system. The use of that word "system" may have a little different meaning than that which General Wickersham applies to the term. I mean the system that awards to a few favorites a long list of references which keep them going at the expense of the litigants; and when a reference is made and it is usually consented to by the parties, only for one purpose — namely to expedite the matter, it usually delays the transaction because the referee charges his per diem compensation, and that is the system that I think is wrong. I believe in official referees. I believe that it is a much-needed reform. The only thing that I think should be is that we should have either one system or the other. It seems to me to be wrong to provide for commissioners who are to act and be paid, and then leave it open to the discretion of a justice sitting in special term to send references to his favorites.

Mr. Wickersham — I tried to explain a moment ago the jurisdiction given under the civil practice rules would throw the exercise of discretion upon the justices of the special term. It is for that purpose, putting it under the civil practice rules.

Mr. Baldwin — The only difference between your idea and that of the committee and my own is this: You wish to delegate to the judges themselves whether they will take upon themselves this political patronage, I will call it, or whether the people themselves will say, "Where we pay the official referees the official referees shall do the work." I offer this amendment, Mr. Chairman.

Mr. Unger — Mr. Baldwin, is your amendment designed to cover also the evil I pointed out, that is to say, commissioners may respectively be designated as referees only when it is sent to them to determine?

Mr. Baldwin — It may. It says all references shall be made to official referees.

Mr. Unger — To the commissioners?

Mr. Baldwin — Or official referees.

Mr. Unger — Mr. Baldwin, your argument has been directed mainly toward eliminating and getting rid of this political favoritism that you speak of. Now, do you think it does eliminate favoritism, or rather that it simply turns it over to this presiding justice of the appellate division.

Mr. Baldwin — Yes. It would not be patronage if paid for by the public. The referee, who is paid by the public, would perform the work. He would be performing public duties, and my proposition is that it would take away from a judge sitting at Special Term the possibility of imposing expense upon litigants when there are public officials paid for that duty.

Mr. Cobb — Mr. Chairman, I want to say just a word with reference to the second subdivision of this Section 8, which relates to the appointment of official referees. In the United States and in many other jurisdictions, the judges are appointed for life or as long as they can render useful service. Here in New York we have an arbitrary limit to their services, and it happens in many cases, if not in most, that the State is deprived of the richest and most valuable service that the judge can render. You take a judge, for instance, like Judge Andrews, who could have given the State eighteen years of invaluable service, with his rich experience and his trained mind, that seventy-year limit deprived the State certainly of a most valuable public servant.

Now, this provision simply enables the State in connection with this new practice act to use for the performance of certain functions that must be performed certain referees and this saves to the State this very valuable class of men. Now, in addition, I want to refer for a moment to the only two official referees of this class that I know of, Judges Vann and Haight of the Court of Appeals. By an act of 1909 they were permitted to act as referees in certain classes of cases against the State of New York. Their salary was fixed at $6,000 and they have served the State faithfully since that time. It so happened that the Board of Claims was composed of two laymen and one lawyer. It was not well adapted to the handling of difficult litigation. It developed that the important cases against the State, like the Sate fair cases where 15 or 20 men lost their lives, a set of claims which involved great difficult questions, and the larger condemnation proceedings, one before Judge Haight in which more than two million dollars was demanded and several nearly as large referred to Judge Vann — these larger claims fell into the hands of the official referees and if their services had been paid for at the scale which Mr. Stanchfield says prevails in New York, these judges would have been paid fifty thousand dollars a year and yet they served the State for six thousand dollars. Now, I am not in favor of assisting or pensioning judges, but if we can kill two birds with one stone, I see no reason why we should not do it. These men are earning much more than they are paid. They are as richly earning the reward which the State of New York gives as any other public officer and at the same time in their declining years they not only will have a small salary, but will have the privilege of still continuing to do the work which has engrossed their lives. It seems to me that the provision is in all respects apt.

Mr. F. Martin — Before the debate on this section closes, I wish to urge the adoption of the Griffin amendment which will

provide for the Bronx the same relief which is provided for the counties embraced in the Second Department, which are within the city of New York. We find throughout this article, everywhere, that the First Department is dealt with, an attempt, it seems to me, to cast aside the Bronx and disregard it in every manner. It may be news to the members of this Convention that in the First Department to-day there are 32 supreme court judges and only two in the Bronx, while Bronx county pays one-sixth of the expenses of the judicial system. There are nine or ten city court judges with a jurisdiction throughout, the entire department and not one of them from Bronx county. Now, in this bill, while it is provided that the referees or commissioners shall be appointed from the counties in the Second Department, in the First Department, it simply says they shall be appointed by the chief judge in that department. Now, the Griffin amendment would provide that at least some of them should be appointed from Bronx county and remedy the present evil. I am against the referee system as it is in vogue to-day in New York city, and I am glad to get almost anything to remedy the evils and the defects, but I do not agree with some of the gentlemen here when they tell us that this section is a remedy, and that we will get high-class gentlemen. I have tried a great many cases before the so-called high-class gentlemen, and we have some very high-class gentlemen in New York as lawyers who can give decisions which are as poor in effect as any of our low-class gentlemen. We want good men and any system which will give us good men I am in favor of, but I do not think that this system will work as well as we are generally led to believe it will. In my county to-day we have, as I said, but one Supreme Court judge, he has been in Special Term eighteen months and has been appointed for the balance of this year, making in all two solid years, including the summer months which he will be in Special Term. He is the only judge in our county; the only judge. Why, of course, I don't believe for a moment that he has been put there by any court for the reason that there is any patronage in the Bronx. I don't believe that any such thing as that would happen. But he is there, nevertheless, and I want a system which will remedy present conditions and which will insure good referees and which will insure proper results in cases. For years I tried contract cases in New York City and the courts said they were too long for the trial term or for a jury. The results secured before juries and the trial judges in cases that took from four to five weeks to try were so far superior to the results obtained before some of your high-class referees, that it was decided by the corporation counsel's office that every contract case

should be tried in the Supreme Court before a jury. Now I feel that there should be some system evolved where the people can say who these referees shall be, where they will be closer to the people, and the people can do that if it is arranged in some way to elect these referees and not have indirectly an appointive judicial system, so that some of the lawyers in New York who are unable to get an appointive system throughout the whole State may indirectly secure the result they have sought for a long time. They fear now to broach the subject of an appointive judiciary, but they are seeking to get indirectly what they cannot get directly.

Mr. Brackett — Were it not for the inadvertent statement of the learned gentleman who has charge of this section of the article for the Committee, when he stated that this was the result of the unanimous action of that committee, I should not engage the attention of the Convention for a single moment. But I cannot permit a record to be made, which, if not protested against, would put me in the list of those who believed in any degree in the pensioning of judges in the State. I find myself this morning a good deal in the position of the old man who having lost his wife and a month or two later talking with his neighbor as to the discomforts that came to his housekeeping by reason of her loss, said that he sometimes almost felt sorry that Maria had gone. I sometimes in thinking it over am sorry that I did not vote for my brother Barnes' amendment. If it were designed and if it would have covered this case and prevented the action which the committee has taken and which I assume that the Convention is going to take, or the Committee is going to take, because I see the preliminary signs when the whole fifteen or sixteen members of the committee are behind the scheme, and seeing every influence of the Convention is put on to put it through, I know what the result will be — I say that, if I had believed that the Barnes amendment would have prevented this, it would have weighed and outweighed the multitude of evils which I feared might happen by reason of its adoption. I presume that the situation in the city of New York with respect to condemnation commissioners is one that calls for immediate and radical treatment and corrective treatment. I cannot see in this much of a corrective, and I can see in this Supreme Court commissioners scheme very little beyond the creation of a circle of judicial favorites who will be appointed, and an unlimited number of whom may be appointed, a sufficient number of whom will be appointed, to take care of every friend or connection of any member of the appointive power. If there is any member of the family that is not quite able to take care of himself within the profession he will have one of these places and

be appointed a commissioner, and if I were a judge I don't doubt the same result still would follow; if I had any cousin or uncle or relative that was not able to take care of his family, I presume I would help him out if I could bring my conscience up to the point of appointing him.

We will have all these men appointed. It will be a system of judicial favorites, unlimited in amount, which will be fastened on the city for all the future, and then, further, when you come to the matter of naming Supreme Court judges, you will find that the argument will be urged over and over and over again, and with convincing force by those who urged it, that, really the judges ought to be selected from these sub-gentlemen who have acquired a very valuable experience as Supreme Court commissioners and presently have, as the gentleman from the Bronx just pointed out a vestibule of appointment to which your Supreme Court judges will presently be nominated and elected, and in that way you have all the evils of an appointive judiciary. But I care nothing about it, Mr. Chairman, and I have not risen to say any bitter things on the subject. I care nothing about it except I want to indicate that to my mind it is not wise, but I agree that the members of this Convention from the city of New York should have about what they want, and therefore, I do not feel it of supreme conscience, so far as I am concerned, and I shall content myself with simply voting against the proposition. With respect to the appointment of official referees I say, and I am glad that we have the entirely frank admission of the learned gentleman in charge of the section, who said that not wanting to name it as a "pension" it was in fact and is in fact a system of pensioning for some very hard worked servants of the State, who, by reason of age, or political misfortune, have been retired. Make no mistake about it, brethren, it is a pension. We know that every time it is suggested that it is a pension, the case of Judge Vann and Judge Haight is brought up. I want to admit that they are peculiar and rare in their service, and if they continue to render the service they have rendered in the two or three years past longer, it could well be afforded that they could be compensated as referees and paid by the case, and if that amounted to fifty thousand dollars a year they would earn it very likely; but in pointing to the cases of Judge Vann and of Judge Haight as justification of the scheme which takes in every judge of the State coming within the class, you don't furnish a sufficient argument in its favor. The people of this State do not want to pay pensions to judges. Now, don't have any mistake about that. They passed on it once and they will pass on it again. There is not any question about what will happen to any work of this Convention that comprehends remotely or directly any scheme

for the pensioning of judges. The people of the State will have none of it. And, to me, Mr. Chairman, it stands as one of the inscrutable things that the members of a profession, the best compensated of any of our whole class of servants, the members of a profession which I sacredly believe to be the noblest in which human beings can engage,— that the members of that profession are willing either themselves indirectly to pass around the hat and take contributions from the State, or willing to have anyone else do it. Why, Mr. Chairman, if there is any necessity for taking care of members of the profession who have become disabled, who cannot longer secure a living out of the profession, I have thought that the profession itself, with all of its proud history behind it, and its tradition, and with all its present pride in it, would see to it that a proper fund was made up by voluntary contributions of the members of the profession themselves.

In any event, it ought never to be that men who themselves are not earning one tithe of the amount which you propose to give in the way of pensions to these men should be called upon to contribute to make that amount up. Why, Mr. Chairman, I had supposed that if there is any member of our public service that is entitled to a pension it would be the teacher of the State. I had supposed still farther that if there were any possible persons standing a show or a chance of a pension, it would be a woman teacher of the State who, having devoted her life unselfishly to the service of the State, and it is certainly no less a service to the State, the teaching profession and the legal profession,— that a woman who having devoted her years to the service to the State, had arrived at a time of life when she found it hard and impossible to continue her work and where she is usually unable to earn more, and whereas in many cases the earnings of her years have been used up in the support of those that were dependent upon her,— I should think that if there was any class of persons in the world to whom it would appeal to the members of this Convention to give a pension, it would be that class. But there is not one here to speak for them. There are not a hundred and twenty teachers in this Convention. There are one hundred and twenty lawyers, and so it comes that the one hundred and twenty lawyers, the most of them, the young ones, those under sixty years old, potential judges,— those under fifty-six years of age, I will make it, so as to make the full fourteen years,— potential judges stand here appealing for a pension to the judges who have been retired by age or by political misfortune when any one of the members, those under fifty-six years of age, may, perhaps, himself, finally be a beneficiary. Mr. Chairman, it is going to pass this Convention. If I expect at all to be heard by anyone it is by an audience and by a Convention

wider than the hundred and sixty-eight members here. If it is defeated at all, as I believe it will be defeated, by an overwhelming vote that you will be surprised, you who have urged it here, it will be at the polls. But I want again, at this time, knowing full well, Mr. Chairman, that I am speaking only for a minority and for perhaps a very small minority of the Convention, and though I speak alone, I must make the record that I cannot cast my vote for this provision of this article.

The Chairman — The Chair neglected to have Mr. Baldwin's proposed amendment read. The Secretary will read the amendment.

The Secretary — By Mr. Baldwin. Page 12, after the word "state" in line 26, add the following: "In any department where there are supreme court commissioners and official referees, no reference shall be made to any other than an official referee or a supreme court commissioner without the consent of all parties to the litigation."

Mr. Stanchfield — Mr. Chairman, before Mr. Westwood takes the floor, I would like to offer an amendment which I wish the clerk at the desk would take down, as it consists of a few words. It is on page 11, and it is to meet a situation in the Bronx in accordance with the request coming from Mr. Griffin and Mr. Martin and Mr. Haffen. On page 11, line 17, after the word "appoint" insert the words "New York and the Bronx" or, the words "for the counties of New York and the Bronx". Mr. Marshall suggests directly that it is "Bronx" and not "The Bronx", so that it would read, "Counties of New York and Bronx".

Mr. Shipman — Mr. Chairman, I would like to ask Mr. Stanchfield a question. Would not that amendment be better if he used exactly the same language as to the second department, because in the future we may take in some more, within the next twenty years. The second department might have even another county in it.

Mr. Griffin — Mr. Chairman, I agree with the suggestion of Mr. Shipman.

The Chairman.— Will the gentleman prepare an amendment to cover that point and then offer it?

Mr. Griffin — I have already prepared an amendment. My amendment is at the desk; my amendment covers the counties in that department, using precisely the same language, Mr. Stanchfield, as is used on line 21, the identical words which are used in reference to the second department. Now, I believe in using those same words. That will please me beyond question.

Mr. Stanchfield — How does it read?

Mr. Griffin — If you begin on line 19, the bills says, " In the second judicial department the appellate division from time to time may appoint for each of the counties in that department ". Now, I take that same language and put it there on line 17 after the word " appoint " making it applicable to the first department as well as to the second department.

Mr. Stanchfield — I am perfectly willing to take it in the language which you suggest.

Mr. Griffin — That is contained in my amendment which is at the desk.

The Chairman — I take it, Mr. Stanchfield, you withdraw your amendment?

Mr. Stanchfield — Yes.

Mr. Westwood — Mr. Chairman, Senator Brackett has called attention to the fact that there are in this Convention a number of lawyers who are on the lesser side of fifty-six years of age, and that perchance they may have some remote personal interest in that part of this discussion which has to do with the matter of official referees. He has, however, left an opening for me to speak without embarrassment upon this question, for, although I am less than fifty-six, yet, after a very careful microscopic search, I am unable to find in my organism any microbes of judicial potentiality.

There is, it seems to me, one phase of this subject, which has so far escaped the attention of the distinguished members of the committee who have already addressed themselves to this branch of the section under consideration. This has been spoken of as a judicial pension, but there is an altogether different side of the matter. Time was in the manufacturing practice in this country, when the by-products of manufacture were thrown out upon the scrap-heap and abandoned and held for naught. But as competition grew and it became necessary to cut the corners, the waste pile, or the scrap-heap has been found to reveal great fortunes, for the reason that men have come to find value in what was supposed to be without value. Now, that had been up to some few years ago the situation politically in New York State. We had paid our judges salaries for a long period of years. We had, and the people had, educated them in the principles of law. We had in them a great storehouse of legal learning which, until recent years, upon their retirement from the bench or upon their attainment of the age of seventy years we dumped out upon the scrap-heap. The people of the State, the litigants of the State, the State itself is entitled to use for its purposes the learning, the wisdom, the competency of the judges who are being retired. For these reasons, it seems to me that it is well worth while for

the Convention to consider whether it is not a fair, an honest, an adequate means by which we can conserve something for the State which in former years went for naught. In molding a constitution, reference must be had, of course, to the experiences of the past, and I have yet to hear any valid criticism of the way in which for the last twenty years the system of official referees has worked in this State. If it has now worked badly, it should commend itself at once to us as a means which we should perpetuate for the benefit of the State. My friend, Senator Brackett, has suggested that if there is established what he has called perpetual pensions the people will not stand for it. I disagree with Senator Brackett's prophecy, or his statement of the popular will. It is a difficult matter to determine what the people believe. There has been only one notable instance in the past few years where any one man undertook definitely and finally to say what the people believe. The judgment of any one of us, other things being equal, is as good as the judgment of any other of us; but I can say as a representative of that part of the State from which I come, that there has been no such criticism as Senator Brackett implies, and from the "supreme" end of the State I think that I am entirely justified in promising for this Constitution, whether it has this provision in it or not, the hearty support of the residents of that section. I may take this occasion, Mr. Chairman, to say that, with the exception of one or two propositions in which it is altogether possible I may be wrong, I am well pleased, highly pleased with the product of the Judiciary Committee which has been reported to the Convention. It is possible that I am a little biased in that feeling, because I think that I recognize in it a reflection of a rather large proposition that I myself urged upon the consideration of that Committee. But as to this particular section I am not only satisfied, but pleased, and I hope that the members of the Committee of the Whole may support in this respect the conclusions of the Judiciary Committee.

Mr. Pelletreau — I hesitate to say anything in regard to this matter. I don't feel that I am competent so to do. I had not intended to be one of the speaking members of this convention. But in this matter there is some thought which has occurred to me which I desire to impart. I am not a member of the Judiciary Committee; I am but a plain man of the State, a plain country lawyer. Senator Brackett said that he believed he was speaking for but a minority in this Convention. I don't believe that he was speaking for a minority in regard to the pension provision contained in this proposal. I believe the plain people of this State, of whom I am proud to be one, do not believe in pensioning judges. They have passed upon that question once and if

they pass upon it again there is no question in my mind at least of what their decision will be. I believe that there should be commissioners, official referees, to remedy what I believe to be a scandal in the city of New York. I believe such men should be appointed by the judges to act as referees or commissioners in condemnation proceedings and for the good reasons that were ably presented to this Convention by Mr. Steinbrink. I do not believe, however, that this Convention should be a pension bureau. I believe that the clause sought to be striken out by the amendment proposed by Mr. Leggett, I believe that that clause was put into this proposal at the intense persistence, day after day, night after night, of the judges of the Supreme Court. I have had some experience and observation in my quiet life in the past, and I know that they are the most persistent, the most forceful, the most effective lobbyists of any class that we have in the State, and as has been so well said by my aged and venerable friend, Judge Stowell, they have jacked up their salaries by intense persistent application to the Legislature of this State from time to time until they are now at the present high figure. I recall in that regard on the application of the judges themselves they all desired a private secretary which was given them by the Legislature at a moderate salary. They again applied and wanted it increased. The judges, those of whom had sons, appointed their sons in many instances. In instances where they had not a son, in many instances they appointed their daughters. I know of at least one instance of a judge of the Supreme Court of this great State, he had neither son nor daughter, and he appointed his wife. I know of instances where this was done, to take care, as Senator Brackett said, of dependent relatives, and they were loaded upon the payroll of the State, and that condition in some instances exists to-day. There is nothing sacred about the bench. As our learned and great President said yesterday, the judges of the Supreme Court are made of the same material as we are. They are subject to the same frailties, they are human, intensely so. I do not wish to say anything further, but I do hope that this Convention, representing the plain people of the State, will vote for the amendment proposed by Delegate Leggett.

Mr. Dunlap — I had not intended to say a word on this proposition, but I do want to say that in the main I am very much pleased with the amendment as a whole, but there are some provisions that do not meet my approval. This one under discussion, particularly the part relating to official referees, it seems to me goes a great ways. If you will observe the language, it says the official referees now in office are continued and any judge of the Court of Appeals or justice of the Supreme Court who at the

time of his retirement from office shall have served as a judge of a court of record in this State for twenty years or a full term of fourteen years as a judge of the Court of Appeals, or a justice of the Supreme Court, and who shall have attained the age of sixty years, may be appointed as an official referee to hold office during the pleasure of the court,— etc.

Now, according to that provision, every justice of the Supreme Court who has held office fourteen years and has been retired by the people, and very properly, or every man who has been a surrogate or a county judge for nineteen or twenty years, or a Supreme Court judge for one year, are entitled to this appointment. What would be the result if this proposition is put through? Every retired Supreme Court judge who cannot make as much money as the salary, will be pressing for appointment and in nearly every instance they will find business enough to warrant his appointment, so that it is going to make a great horde of official referees in the city of New York. They undoubtedly need many additional referees, in the city of New York, but in the country we don't need them, but we will get them if this provision goes through and becomes a part of the Constitution of the State of New York. We can call it whatever we like, but it is simply a scheme to pension the judges and in order that that may be carried out, and there cannot be any possible appointment of anyone else, this provision provides that no other person shall be appointed by the judges, or provision be made for the appointment of them by the Legislature, so that it is a scheme to make offices for retired judges, and nothing else, and to prevent any other man in the State of New York from being appointed an official referee. This is not only giving a pension to them, but providing that no one else shall even have opportunity to be an official referee. It seems to me that that is a pretty strong and pretty broad proposition. The people, as it has been stated, have expressed their opinion of pensioning judges and the opinion was very decidedly against that proposition. My friend who spoke just a moment ago said that the judges should be retained as a lot of "scraps." I do not think his illustration was very good because the scrap heap is the refuse and we certainly do not want official referees who are nothing but scraps. If they are good for nothing except as waste products they ought not to be foisted upon the people as official referees If they are competent, there is no reason why they should not be appointed on equal terms with other people. There is no reason that I can see why they are to be absolutely appointed, with no possible chance of anyone else being appointed, and for that reason I am opposed to this part of this section.

Mr. Leggett — Just a question I wanted to ask Mr. Stanchfield.

Can you give us in some details the salaries of the official referees and the services which they have performed?

Mr. Stanchfield — My recollection is that the official referees in the county of New York get ten thousand — but I do not care to speak with too great accuracy — and six thousand outside of the city of New York. It is a fact that Judge Gildersleeve and Judge Friedman, who are now in the enjoyment of good physical health, have a regular calendar, Mr. Leggett, and to them are referred, among other things, all the disbarment proceedings which are pending in the county of New York and which constitute a very vast volume of business. In addition to that, of course, they have other matters sent to them for consideration.

Mr. Leggett — How many official referees are there in New York?

Mr. Stanchfield — Four.

Mr. Leggett — What about the other two?

Mr. Stanchfield — Judge Pryor is upwards of 80 years of age, still he is working, I think, practically three or four hours every day in the week from Monday to Friday. Judge Lawrence has had illness, but, when well, he performs some such service.

Mr. Leggett — Are there official referees in the second department?

Mr. Stanchfield — Two.

Mr. Leggett — What do they get?

Mr. Stanchfield — They perform the same general line of work because they are in Brooklyn, and, of course, have the same general functions to perform. There are two, I think, up the State — Judge Vann at Syracuse and Judge Haight at Buffalo, as I told Judge Stowell.

Mr. Quigg — Should not the Committee consider some way of limiting the number of commissioners?

Mr. Wickersham — Mr. Quigg, will you permit me? At the suggestion of some of the New York members, I am going to offer an amendment which will provide that the appointment and the salaries shall be subject to the approval of the Board of Estimate and Apportionment of the city of New York, that is, in the first and second departments.

Mr. Stanchfield — In answer to Mr. Quigg's inquiry, it is not obligatory. This whole section is permissive.

Mr. Quigg — I know, but here you may be creating as many as ten new judges in Brooklyn and a dozen or fifteen new judges in New York, not elected by the people, but appointed by the Appellate Division, which practically means appointed by the presiding judge of each Appellate Division. Now, cannot we have some limit to it?

Mr. Stanchfield — That presupposes that the appointing power will be governed by other than due regard for the interests of the State.

Mr. Quigg — They may make blunders and mistakes just as the rest of us.

The Chairman — The Clerk will read the amendments offered by Mr. Wickersham.

The Secretary — By Mr. Wickersham: Page 11, line 16, after the word " division " insert " with the approval of the board of estimate and apportionment ". Same page, line 20, after the word " division " insert " with the approval of the board of estimate and apportionment ".

Mr. Wickersham — I make that as a suggestion merely, and individually, at the suggestion of some of the New York members. I think it would remove one objection which has been made, that the number and the salary of these officials should not be left wholly to the Appellate Divisions. Personally, it seems to me that it would not impair the system. I can appreciate the force of the criticism that the body controlling appropriations should have a voice in fixing the salary and prescribing the number of those officials.

Mr. Marshall — I desire to offer an amendment.

The Chairman — Mr. Marshall offers an amendment which the Secretary will read.

Mr. Marshall — I will explain the amendment briefly.

The Chairman — We better have it read first and then you may explain it.

The Secretary — By Mr. Marshall: From page 11 strike out lines 16, 17, 18 and 19, and before the first word in line 20, page 11, insert the words " The respective appellate divisions in ". Before the word " second " in line 20, page 11, insert the words " first and ". After the word " department ", line 20, page 11, insert the letter " s " and strike out the words " the appellate division ". From line 21, page 11, strike out the words " of that department " and insert the word " therein ".

Mr. Marshall — A very brief explanation will disentangle that very elaborate amendment. We have now provided in lines 16, 17 and so on: " In the first Judicial Department the Appellate Division from time to time may appoint such commissioners as it deems necessary and fix their compensation, which shall be uniform and a charge against the city of New York. In the Second Judicial Department the Appellate Division from time to time may appoint for each of the counties of that department within the city of New York, such commissioners as it deems necessary and fix their compensation, which shall be uniform in each county,

and a charge against the city of New York." In view of the fact that an amendment has been offered by Mr. Wickersham that the words " the counties of New York and Bronx " be inserted in the part which relates to the First Judicial Department, it would be really repeating the same idea in the consecutive sentences and we are therefore able to cut out four lines which are made unnecessary. It would then read: " The respective Appellate Divisions in the First and Second Judicial Departments from time to time may appoint for each of the counties therein within the city of New York such commissioners as it deems necessary and fix their compensation which shall be uniform in each county and a charge against the city of New York ".

Mr. Austin — I also wish to offer an amendment to lines 25 and 26 on page 12. It now reads: " The Supreme Court Commissioners and official referees during their continuance in office shall hold no other office under the State ". I do not think they should hold any office at all, whether it be under the State or otherwise, and I therefore move to substitute the exact prohibition which applies to Supreme Court justices in the Constitution, which is that they shall not hold any other office or public trust.

Mr. Wickersham — Satisfactory.

The Secretary — By Mr. Austin: Page 12, line 26, strike out the words " hold no other office under the State " and insert in place thereof the words " not hold any other office or public trust ".

The Chairman — Is it the pleasure of the Convention to consider the amendments before recess?

Mr. Wickersham — Mr. Chairman, if we can vote on these measures before luncheon it will facilitate our work. We have been all the morning on one section and we might as well finish it before we adjourn.

Mr. Griffin — In view of the number of amendments and verbal changes which are to be considered, I do not think the Committee of the Whole ought to pass upon these various matters. I think that we would make haste more rapidly by going a little slowly in the consideration of this particular section that has been the object of so much attack in so many quarters and therefore I move that this section 8 be referred back to the Judiciary Committee, together with all amendments pending thereon, that the committee report at its earliest convenience, and that the matter retain its place in general orders.

Mr. Wickersham — Mr. Chairman, if the gentleman wants to make progress, he will not press that motion.

The Chairman — I would like to say to the gentleman that the Committee of the Whole is powerless to recommit a bill.

Mr. Griffin — Of course we can do with this as we did with the

public service bill, request leave of the Convention to do it. However, that is merely a suggestion and if General Wickersham does not approve of it I will withdraw the motion.

Mr. Quigg — Mr. Chairman, I call attention to the fact that the time has arrived when the committee is automatically in recess.

Mr. Wickersham — Mr. Chairman, I move then that we rise, report progess and ask leave to sit forthwith and dispose of this section before we adjourn. We have spent the entire morning on one section, and I think, in view of what we have before us, we ought to dispose of it before we leave it. I hope the committee will concur. By unanimous consent, we can proceed without taking any further action.

The Chairman — Is there any objection to proceeding to the disposal of Section 8?

Mr. Quigg — Yes, on the understanding that Mr. Griffin may make his motion. I rather think we ought to get this printed and know what we are voting on.

Mr. Wickersham — We know what we are voting on. I think this committee understands it fully.

The Chairman — Is there objection to proceeding by unanimous consent?

Mr. Quigg — No, not so far as I am concerned.

The Chairman — The question is upon the amendment offered by Mr. Quigg.

Mr. Wickersham — May the amendment be read?

The Secretary — Mr. Quigg moves to amend by striking out Section 8.

The Chairman — Those in favor of the proposed amendment will signify by saying Aye, opposed No.

Mr. Quigg — I ask for a division.

The Chairman — Those in favor of the adoption of the amendment offered by Mr. Quigg will rise. Those opposed will rise. The amendment is defeated.

The Chairman — The next is the amendment offered by Mr. Griffin. I would suggest to Mr. Griffin that Mr. Marshall's amendment, which comes a little later, covers a part of his proposal.

Mr. Griffin — I was going to say that it does cover my amendment as to the appointment of Supreme Court commissioners from the various counties, but a part of my amendment refers to the imposition of the expense of the commissioners upon the respective counties instead of upon the entire city of New York. You will remember that I argued that where these commissioners are appointed for the respective counties, the burden ought to be borne by those counties.

The Chairman — I would like to say, with respect to the subject of amendments, that the Chair has been very lax in the observation of the rule made by the Convention that each member be limited to fifteen minutes. I think the Senator has had thirty minutes at least.

Mr. Griffin — Mr. Chairman, I was called to the floor at the behest of the Chairman, so that I think it is his fault, and I should not be reprimanded as to the time I am consuming.

The Chairman — I am not reprimanding you at all.

Mr. Griffin — I ask to withdraw two amendments. That leaves the amendment on page 11, line 19, to strike out the words " city of New York " and put in " respective counties in said department ", and again on line 24.

The Chairman — Senator Griffin withdraws his amendments with reference to the appointment of commissioners in the several counties. The Secretary will read the other amendments.

The Secretary — Page 11, line 19, after the word " the " strike out the words " city of New York " and insert the words " respective counties in said department ". Page 11, line 24, after the first " the " strike out the words " city of New York " and insert " respective counties in said department ".

The Chairman — The question occurs upon the amendment just read. Those in favor of the adoption of the amendment will say Aye, opposed No. The amendment is lost. The next is the amendment offered by Mr. Wickersham, which the clerk will read.

The Secretary — Page 11, line 15, at the end of line 15 insert the words " or by the civil practice rules ". Page 12, lines 19 and 20, strike out the words " Until the Legislature shall otherwise provide " and insert instead the words " Until otherwise provided by the civil practice rules ". Page 12, line 22, after the word " legislature " insert the words " or the civil practice rules ".

The Chairman — Those in favor of the adoption of the amendments will signify by saying Aye, opposed No. The amendments are adopted. The next are the amendments offered by Mr. Leggett.

Mr. Barnes — Mr. Chairman, do I understand that I may speak on the amendment, or is that out of order?

The Chairman — You may. The amendment will be read.

The Secretary — By Mr. Leggett: Amend Article VI, Section 8, as follows: Strike out all of line 7, after the word " appointed," and all of lines 8 to 24, inclusive. In line 25, strike out the words " and official referees ".

Mr. Barnes — This amendment simply strikes out the official referees. The Judiciary Committee in favoring this amendment have evidently followed the procedure which I suggested to the

Convention in the proposal which was voted down last Tuesday; that, when privilege is asked, it should be asked from the people through the Constitution and not be enacted by the Legislature. I understand that the present statute covers this point. The question then before this Convention is, should this privilege be incorporated in the Constitution by this Convention and submitted to the electors, and argument of the merits of that proposition is certainly proper. The contention follows that, if the judges of the Court of Appeals and of the Supreme Court are to be granted privilege, then there is no reason why privilege of all kinds should not be granted. I think the members of the Judiciary Committee who have brought in this report thoroughly appreciate that the judiciary, to be effective, must not be unpopular; and that, to carry weight with its decisions, it has behind it no power in the State, no marshals or militia, except as provided by the people, even when they declare that a law passed by the Legislature is unconstitutional. That was true last Fall of the very interesting case of the election officials who were told by the Court of Appeals to register rural voters when the Legislature had told them some months before that they should not do so. They registered them. Now, if the court is to be a privileged body and the members of it are to receive such privilege as is proposed here, how long will it be before its verdicts will not have that acceptance which I believe every member of this Convention believes they should have? I therefore hope the Convention will adopt Mr. Leggett's amendment.

Mr. Wickersham — Mr. Barnes is in error in assuming that this provision merely embodies in the Constitution the provisions of the existing law. It does not. It very greatly narrows the provisions of the existing law. It was introduced for the purpose of narrowing the provisions of the existing law. It was introduced to check the Legislature from extending to various classes of judges who had not, by reason of length or dignity of service, justified their selection to these offices,— from conferring upon them and from yielding to the insistence of their friends that they should be appointed merely because they had held certain judicial positions.

Mr. Barnes — I was not correct in that regard but the position that I took in this matter the other day was that privilege should not be granted at all.

Mr. F. Martin — I understand the provision as it is now drawn would include judges who failed of re-election or failed of renomination in certain parts of the State of New York and will insure a pension to such judges. If they were on the Supreme Court bench for one term, even though the people did not want to return

them to office in the district from which they came, they would be included within this provision for a pension and that it also includes certain judges in the first and second department that come under that provision and who have failed of re-election.

Mr. Leggett — I call for a rising vote.

The Chairman — The question is upon the amendment offered by Mr. Leggett. All those in favor of its adoption will rise. Those opposed will rise. The Clerk will announce the result.

The Secretary —Ayes, 36. Noes, 49.

The Chairman — The amendment is defeated. Next is the amendment by Mr. Baldwin. The Clerk will read.

The Secretary — On page 12, after the word "state" in line 26, add the following: "In any department where there are Supreme Court commissioner and official referees, no references shall be made to any other than an official referee or Supreme Court commissioner, without the consent of all parties to the litigation."

A Delegate — Mr. Chairman, I would like to ask a question. Suppose there are not enough official referees or Supreme Court commissioners. What can be done then?

Mr. Baldwin — The courts will take care of the work. If we are to have official referees — my object in moving that amendment is this: We know, there is a large number of cases in which references are necessary, and it is for that reason that we have official referees. We also know that there is widespread abuse, especially in the city of New York, and I think New York city does not vary from the other departments of the State, where judges make it a practice to refer every issue that they possibly can to some friend, and oftentimes they have a favorite list that is submitted to them by somebody, and from that he takes a name, to whom that reference is referred, contrary to the wishes of the litigants, often. Now, this does not prevent references being made of issues that are framed where the parties to that litigation desire a referee. Some of my friends here have asked me would that prevent lawyers from agreeing that a reference shall be made to some other than the official referee. It does not. It especially provides for that. But it does prevent a justice of the Supreme Court from sending a compulsory reference to any one other than an official referee, and thereby imposing cost. Not long ago I had a little experience in compulsory references. The other side not being ready to proceed to trial, the Court said, "Then take a reference". The amount involved in the litigation was $1,700, while the bill of the official referee was $2,500; and that gentleman is now sitting on the Supreme Court bench. The fees were $2,500, and the amount involved, $1,700.

Mr. Latson — Did you say he was an official referee?

Mr. Baldwin — I was mistaken. He was not an official referee; he was only a friend of the court. I cite that case merely as an illustration of the fact that oftentimes excessive expense is placed upon litigants. Now, either let the court try the issue, or, if he thinks a reference is necessary, then let the case be sent to an official referee. If the parties to a litigation desire a reference for convenience or any other cause, and they do not desire an official referee, then let the court upon stipulation of the parties appoint another referee. The record showing the number of referees appointed by certain justices in New York city is a scandal. Certain favorite ones have grown prosperous upon business sent to them by their friends on the bench. There is not a practicing attorney but what knows of this abuse. My amendment would, if adopted, put an end to such abuse. If you are going to institute a reform, institute it. If you are going to stop this political patronage, stop it. Don't pretend to reform something, and then leave the door open for a recurrence of the old abuse. If you are going to have official referees, have them official, and let them do the work. Have enough of them to do all the work, and pay them for it. Adopt this amendment. Don't adopt a sham under the guise of carrying out a reform which does not stop the abuse.

Mr. Wickersham — Mr. Chairman, the gentleman's motion would destroy the possibility of the reform. It is a sham support of a real reform, and I trust it will be condemned.

Mr. T. F. Smith — Mr. Chairman, am I right in assuming that all Supreme Court judges other than those sitting in the Appellate Division will have no right to appoint a referee unless the parties to the suit agree on the naming of the referee?

Mr. Baldwin — That is right.

Mr. Stanchfield — Mr. Chairman, just one word in answer to Mr. Baldwin. The Committee heard arguments exactly in harmony with the one presented by Mr. Baldwin, and this article was drawn with great care to meet just the condition to which Mr. Baldwin so eloquently brings the attention of this Committee. This section is to be read in connection with the Civil Practice Act, which it is assumed the Legislature will pass. This is a Constitution. It is made comprehensive in broad and general and comprehensive language, and we are leaving it to the Legislature and the courts under the Civil Practice Act and the rules of the court to obviate in detail and in terms just the evil of which Mr. Baldwin is now complaining.

The Chairman — The question occurs upon the amendment by Mr. Baldwin.

Mr. Baldwin — I call for a division.

The Chairman — Those in favor of the amendment will rise. Those opposed will rise. The amendment is defeated. The amendment offered by Mr. Wickersham. The Clerk will read.

The Secretary — By Mr. Wickersham: Page 11, line 16, after the word "division", insert "with the approval of the board of estimate and apportionment". Same page, line 20, after the word "division" insert "with the approval of the board of estimate and apportionment".

Mr. Unger — Mr. Chairman, I trust Mr. Wickersham's amendment will prevail. It is a very fair compromise and is intended to relieve the city of New York of some of the untoward burdens that the proposal in its original form would have imposed.

Mr. Griffin — In view of Mr. Marshall's amendment, may not the adoption of General Wickersham's amendment now conflict and would it not be well to combine them?

Mr. Marshall — I am opposed to Mr. Wickersham's amendment, I regret to say, although I am a member of the Judiciary Committee.

Mr. Wickersham — Mr. Chairman, this amendment is open on the floor and I have no objection to Mr. Marshall expressing his views about that. It is not a committee matter. It is an independent matter here.

Mr. Marshall — I should not have made any objection if it had been a committee matter. The matter was suddenly sprung upon us, with the offer of this amendment, without any consultation with members of the committee. The subject had been considered in the committee and was voted down by a decided vote. Oh, yes. The question as to whether the Board of Estimate and Apportionment should have anything to say about it. The argument against it was that the appointment of Supreme Court commissioners is a judicial function, a judicial act. If you once put into the appointing power the Board of Estimate and Apportionment, you are bringing politics into a subject matter which should be kept out of politics most religiously. It is impossible to conceive of the practical workings of this system without at the same time seeing the hands of the politicians in every appointment made. This recommendation of the committee, of the appointment of Supreme Court commissioners, was a most admirable one, but I think that the life of it is taken away by this amendment.

Mr. A. E. Smith — Inasmuch as this is a question of expense to the city of New York and to the taxpayers of New York, and a form of politics, I feel that I should say something, not for this article necessarily, not for this section of this article, but for the

Constitution itself. Now, there is one thing we must keep in our mind, and that is: That after we are finished here with our four or five months of hard work and labor, this will not be the Constitution of the State of New York until the voters at the polls adopt it. Now, I can see, looking at it, not from a judicial or legal standpoint, but from the standpoint of a business man, I can see how nice this is going to look to the already overburdened taxpayer in New York when we tell him he has to have eight court judges, with all the offices that go with it, and all the attendants that go with them, and all the patronage that accompany them, and all the offices and waiting rooms they must themselves have, and then turn a page or two further in the Constitution and say not only that, but here is the Appellate Division in the First and Second Departments permitted to appoint as many of these commissioners as they please, and to fix their salary at anything they like. Now, have a little regard for the department. Don't let us have it kicked around the polling places as if it did not amount to anything. Don't let us at the end of our months of hard work crowd in this and have the taxpayers say that the old one is good enough for us, we will pass this one up.

Mr. Marshall — Mr. Chairman, has the gentleman read the proceedings of the Convention of 1894, and has he seen that that prophecy was made three times a day, and it was made in vain?

Mr. Smith — No, I have not made as rash a prophecy as was made then. They said it would be total destruction; I simply said it would be kicked around a little bit. We may try to take the judiciary out of politics, and we may talk about taking it out, but the taxpayer does not believe that it is out and they believe that judges, like all ordinary human beings, when they get in office try to bring in their friends and relatives, especially the relatives, more so than the politicians, the so-called politicians. I think the amendment should prevail.

Mr. Wickersham — Mr. Chairman, I think the argument is unanswerable that the city of New York, which pays the bill, should have a voice in fixing the salaries and determining the number. For that reason I submitted that amendment individually as a means of meeting a great deal of the opposition which otherwise would have existed to the measure.

Mr. Weed — I want to say one word on this matter. I most heartily support Mr. Shipman's amendment for the reason that he has stated. The judges of the Appellate Division are not elected for the purpose of appropriating money, and it is the common conception of our constituents that where money is to be appropriated the officers making the appropriation should be

elected officers. Now, in this section the Committee have recognized this principle in one portion of it while they have failed to recognize it in other portion. In the latter portion of this section they give to the Legislature the right of fixing salaries of official referees for the good reason that the Legislature is responsible to the people and can be called to account for any appropriation they make, and I think the principle is recognized in the latter part of that section if applied as Mr. Wickersham seeks to apply it in the first part of the section and give the appropriating body, the person who handles the money of the State and is responsible for the manner in which they do handle it, the right to say to what extent this burden should be placed upon the taxpayers of the city.

Mr. Low — Mr. Chairman, I want to add my voice to that plea. There is very great objection in the city of New York, and very just objection, to mandatory legislation involving expense upon the city, and I think there would be equally serious objection to mandatory constitutional provisions at this time.

The Chairman — The question occurs upon the amendment. Those in favor will say Aye, opposed No. The amendment is carried. The next is the amendment offered by Mr. Marshall.

Mr. Wickersham — Mr. Chairman, that amendment will require further amendment. Will the clerk kindly read that amendment?

Mr. Wickersham — One moment, Mr. Clerk, will you kindly hand me the amendment by Mr. Marshall, to put in the words to correspond with the one just adopted?

Mr. Brackett — Mr. Chairman, while waiting for Mr. Marshall and Mr. Wickersham to fix up their section, I might say a few words of sympathy to Mr. Marshall — he has been riding very safely on top of the steam-roller, but this time he fell off.

Mr. Wickersham — Mr. Chairman, I don't know of anyone better qualified to extend sympathy of that sort than my friend, Mr. Brackett.

The Chairman — While this amendment is being corrected, I suggest the committee take a vote on the Austin amendment. I understand there is no objection to it.

Mr. Wickersham — What is that other amendment?

The Secretary — Page 12, line 26, strike out the words "hold no other office under the state" and insert in place thereof "not hold any other office or public trust".

The Chairman — The question occurs on the adoption of that amendment. Those in favor will say Aye, opposed No. The amendment is adopted.

Mr. Wickersham — Mr. Chairman, I submit the following:

"with the approval of the Board of Estimate and Apportionment."

Mr. Marshall — It would read then, striking out lines 16 to 19, "The respective Appellate Divisions in the First and Second Judicial Departments, with the approval of the Board of Estimate and Apportionment from time to time, may appoint for each of the counties therein, within the City of New York such commissioners as it deems necessary and fix their compensation which shall be uniform in each county."

Mr. Wickersham — Mr. Chairman, at one point that should be changed by inserting "may appoint and with the approval of the respective boards of estimate and apportionment fix the compensation."

Mr. Griffin — Mr. Chairman, I should like to ask Mr. Marshall if he would not accept a similar amendment on line 25, where provision is made for the appointment of Supreme Court commissioners in the third and fourth departments, and introduce after the word "appointment" on line 25, the words such as he has used here, "by the respective Appellate Divisions". You will observe the language of the provision as it now stands leaves it open.

Mr. Marshall — That is a matter that I have not consented to because my mind has not been directed to that subject.

Mr. Griffin — Well, I am directing your mind to it now.

The Chairman — The question is on the amendment as just read.

Mr. Deyo — Mr. Chairman, I move that we take a recess.

The Chairman — The question occurs on Mr. Deyo's motion to take a recess. Those in favor will say Aye. Those opposed, No. It is carried. (The President resumes the chair.)

The President — The Convention will come to order.

Mr. Wagner — Mr. President, the Committee of the Whole has under consideration special order No. 61, and begs to report they have made progress and ask leave to sit again.

The President — The question is on granting leave. All in favor will say Aye, contrary, No. The leave is granted.

Mr. Hale — Mr. President, for the Committee on Public Utilities.

The President — The Secretary will read.

The Secretary — Mr. Hale for the Committee on Public Utilities, to which was recommitted proposed amendment introduced by the Committee on Public Utilities, No. 767, introductory No. 706, entitled Proposed Constitutional Amendment to amend Article V of the Constitution by adding a new section thereto relating to public service commissions, reports in favor of the passage of the same with amendment.

The President — Is any special disposition of this desired? The resolution under which this report comes in provided that the bill should retain its place on General Order, and this report accordingly goes to Committee of the Whole.

Mr. Wickersham — I move, Mr. President, that in view of the lateness of the hour, we take a recess until 3 o'clock.

The President —All in favor of Mr. Wickersham's motion to take a recess until 3 o'clock, say Aye, contrary No. It is agreed to and the Convention is in recess until 3 o'clock this afternoon. (Whereupon at 1:40 p. m., the Convention took a recess until 3 o'clock the same day.)

AFTER RECESS—3 P. M.

The President — The Convention will come to order. The Convention will return to Committee of the Whole for consideration of the pending special order. Will Mr. Wagner resume the Chair? (Mr. Wagner resumes the Chair.)

Mr. Wickersham — Mr. Chairman, Mr. Marshall and I have agreed on this form of amendment which combines the two amendments in a way that is satisfactory to us both. I offer the amendment.

The Chairman — The Secretary will read the amendment.

The Secretary — Page 11, strike out the lines 16, 17, 18 and 19. At the beginning of line 20 insert the word " The respective Appellate Divisions in the First and ". Strike out the word " the " at the beginning of line 20. Add " s " to the word " department " in line 20. Strike out the words " the Appellate Division " in line 20. Line 21, strike out the words " of that department " and substitute therefore the word " therein ". Line 22, strike out the word " it " and substitute in place thereof the word " they ". Strike out the letter " s " in the word " deems " in the same line. On line 23, before the word " fix " insert the words " with the approval of the board of estimate and apportionment —

Mr. Wickersham — Mr. Chairman, right there, at the suggestion of Mr. Low, after the words " board of estimate and apportionment " I desire to substitute or add the words " or its successor ".

Mr. Brackett — Some of my associates here who are attending very earnestly the sessions of the committee would really feel quite pleased if they could be advised of some of the little conferences that are going on, and see what it is, so that they know how to vote.

Mr. Wickersham — Senator Brackett, I will ask to have it read again. We want to be sure to have it right.

Mr. Marshall — I can translate it for the gentleman. It will read as follows: Strike out lines 16, 17, 18 and 19, and then it would read: "The respective appellate divisions in the first and second judicial departments from time to time may appoint for each of the counties therein within the city of New York such commissioners as they deem necessary and, with the approval of the board of estimate and apportionment or its successors, fix their compensation which shall be uniform in such county and a charge against the city of New York."

The Chairman — The question is upon the adoption of the amendment as just read. Those in favor will signify by saying Aye, opposed No. The amendment is adopted. The question now is upon the adoption of section 8. Those in favor of its adoption will signify by saying Aye.

Mr. Quigg — I ask for a division.

The Chairman — Those in favor of its adoption will please rise. Those opposed will rise. The Clerk will announce the result.

The Secretary —Ayes, 52; Noes, 15.

Mr. Quigg — Mr. Chairman, I suggest that that vote denotes the absence of a quorum.

The Chairman — There were some gentlemen who did not vote.

Mr. Quigg — I suggest, Mr. Chairman, that it is the duty of the Chair to ascertain the presence of a quorum. I make the point that no quorum is present.

Mr. Wickersham — Mr. Chairman, I make the point of order that the point of no quorum cannot be raised during a roll call.

The Chairman — The Chair thinks there is a quorum. I ask the gentlemen in the lobby to come in the Assembly Chamber.

Mr. Wickersham — Mr. Chairman, I understand that the point of no quorum has not been raised, but it was a mere suggestion on the part of Mr. Quigg that the sergeant-at-arms bring in the outside members; that Mr. Quigg had no intention of pressing the point.

The Chairman — The fact that a total vote, Aye and Nay, does not come up to the requirement of a quorum, does not indicate that a quorum is not present, because some of the gentlemen in their seats did not vote.

Mr. Quigg — Mr. Chairman, the rules provide that in the absence of a quorum it is the duty of the Chair to ascertain —

The Chairman — That is what the Chair is now doing. The Chair wanted to have it understood for the purpose of the record that the total number of votes cast on the last proposal not being up to the constitutional requirement of a quorum does not indicate that a quorum is not present.

Mr. Quigg — Exactly. It is for the Chair to ascertain. I will withdraw the point.

The Chairman — The Clerk will read the section, Section 9.

The Secretary — Section 9. The Court of Appeals is continued. It shall consist of the chief judge and associate judges now in office, who shall hold their offices until the expiration of their respective terms, and their successors, who shall be chosen by the electors of the State, and of the three justices of the Supreme Court now serving as associate judges of the Court of Appeals by designation by the Governor, who shall be associate judges of the Court of Appeals until the expiration of the terms for which they respectively were elected by justices of the Supreme Court, and their successors who shall be chosen by the electors of the State. The official terms of the chief judge and associate judges shall be fourteen years from and including the first day of January next after their election. No more than seven judges shall sit in any case. Five members of the court shall form a quorum, and the concurrence of four shall be necessary to a decision.

The court shall have power to appoint and to remove its reporter, clerk and attendants. In case of the temporary absence or inability to act of any judge of the Court of Appeals, the court may designate any justice of the Supreme Court to serve as associate judge of the Court of Appeals, during such absence or inability to act, but for a period not exceeding four months in any year. For the purpose of disposing with reasonable speed of the accumulation of causes now pending in the Court of Appeals, the court on or before the first day of March, one thousand nine hundred and sixteen, shall designate not less than four nor more than six justices of the Supreme Court to serve as associate judges of the Court of Appeals until the causes pending undisposed of in the court shall be reduced to two hundred, but not later than the thirty-first day of December, one thousand nine hundred and seventeen, when they shall return to the Supreme Court. While serving in the Court of Appeals, the justices so designated shall be relieved of their duties as justices of the Supreme Court. During such period the Court of Appeals shall sit in two parts, each of which shall consist of not more than seven judges, five of whom shall form a quorum, the concurrence of four being necessary to a decision. The chief judge shall from time to time designate the associate judges of the Court of Appeals and the justices of the Supreme Court serving as associate judges of the Court of Appeals to sit in the respective parts of the court, in such manner that the justices of the Supreme Court so designated shall be distributed as equally as may be between the two parts. The chief judge may preside

in either part and he shall designate the judge who shall preside in either part when he is not present. The causes pending in the Court of Appeals shall be distributed by the chief judge as nearly equally as may be between the two parts of the court. The Court of Appeals shall cause a calendar of appeals pending therein to be made and published at least once in each year. Whenever on the first day of January in any year after the present accumulation of causes in the Court of Appeals shall have been disposed of as above provided, there shall be more than five hundred causes pending undisposed of on the calendar, the court shall in the manner above provided designate justices of the Supreme Court to serve as associate judges of the Court of Appeals, and shall sit in two parts; the pending causes shall be distributed between the parts for disposition until the number of causes pending on the calendar shall be reduced to two hundred, but not later than until the expiration of one year from the date of such designations, whereupon the justices so designated shall return to the Supreme Court.

In case of the death, resignation or other disability of any of the justices of the Supreme Court designated to serve as associate judges of the Court of Appeals as in this article provided, the Court of Appeals shall designate a justice of the Supreme Court to serve in his place in like manner as if originally so designated. Each of the justices of the Supreme Court while serving as associate judge of the Court of Appeals as herein provided shall receive from the State the same compensation as the elected associate judges of the Court of Appeals.

Upon the termination of the designation of a justice of the Supreme Court as associate judge of the Court of Appeals who when so designated was a justice of an Appellate Division, he shall return to such Appellate Division unless the term of his designation thereto shall have expired and shall not have been renewed by the Governor. The Appellate Division may designate other justices of the Supreme Court to sit in the Appellate Division during the absence of regularly assigned justices of such Division serving as associate judges of the Court of Appeals, in case the business of the Appellate Division shall render such action necessary.

Mr. Nicoll — After the stormy and turbulent discussions upon the last section, it is my privilege to pilot the Convention into peaceful seas. I have been asked by the Chairman of the Judiciary Committee to present to this Committee the provision which we have made with respect to the Court of Appeals and especially for the disposal of the accumulation of cases now pending in that court. This subject is one of the most vexatious and troublesome things in our judicial establishment, and it has been a constant

source of trouble for the period of the last seventy years, indeed, ever since the present Court of Appeals was established. Three Constitutional Conventions prior to this one have endeavored to get some permanent solution of the problem. I am sorry to have to say that, except for a short space, except for a short space of time between Constitutional Conventions, those efforts have failed. The problem before us now is to see whether or not with the wisdom which may be gathered from experience we can do something which in the future will prevent the congestion which has always existed in the Court of Last Resort. Now, the Convention of 1846, as we all know, abolished the Court of Chancery and the Court for the Correction of Errors and in place of the Court for the Correction of Errors established a Court of Appeals, consisting of four judges elected by the people and four judges from the Supreme Court.

The Supreme Court was divided into eight judicial districts, sitting at times in general and special terms, from which appeals were taken to the Court of Appeals. Now, that was the plan of the Constitution of 1846. At that time there were pending in the Court of Chancery and in the Supreme Court some fifteen hundred cases. Although that was pointed out to the Convention of 1846 by a number of delegates, no provision was made for the disposal of those cases. The result was that the machinery adopted by the Convention of 1846 started with a great handicap. However, nothing was done between 1846 and the Convention of '67, and when the Convention of '67 met they were confronted with an enormous accumulation of cases in the Court of Appeals. That Convention changed the Constitution of the Court of Last Resort from eight to seven, all seven judges being elected by the people. But in order to provide for the existing accumulation, they provided a Commission of Appeals. The function of that commission was to dispose of all the accumulated cases so that the court would start afresh. The Commission of Appeals was composed of the judges of the Court of Appeals, the elected judges of the Court of Appeals, then in office and one other commissioner to be chosen by the Governor. It sat from the first of January, 1869, until 1871. By the provision creating them their period was limited to three years. By that time they had not disposed of the accumulation, so that their commission was extended until January 1, 1872, when they finished their labors, and then the Court of Appeals, consisting of seven judges, undertook to dispose of the current business of the court.

It resulted as it had done before in a constant increasing accumulation of business. It went on from 1872 until 1888. By that time, as many of you undoubtedly recall, it took us three

years to get through the Court of Appeals. So in 1888 a constitutional amendment was adopted creating what is known as the second division of the Court of Appeals. That was brought about by a certificate of the Chief Judge of the Court of Appeals to the Governor informing him of the existing accumulation in the Court of Appeals and suggesting the forming of the second division.

The Governor chose seven judges from the Supreme Court and from whom a chief justice was selected. They began the disposal of the accumulated business, while the Court of Appeals went on with the current business. The old commission of which I have spoken disposed of over a thousand cases. The second division of th Court of Appeals which sat from 1889 to 1891, and again was called together, disposed of over 1,500 cases and finally adjourned in the year 1892. Now, that was the situation in the Court of Appeals when the Convention of 1894 met. We were confronted then as we are confronted now with an accumulation of seven or eight hundred cases in the Court of Appeals, and the problem was what to do about it. We did not undertake to establish either a commission of appeals or a second division of the Court of Appeals. We went about it by a different method. In the first place, we undertook to create the appellate division, four appellate divisions, giving to them the attributes of finality in about 90 per cent. of all the cases. We then took away from the Court of Appeals all appeals in mere interlocutory or practice matters, and authorized appeals only from final orders of final judgments. We then declared in the Constitution that the Court of appeals existed only for the purpose of deciding questions of law. And then we incorporated a provision which inhibit the Court of Appeals from determining questions of fact. So that our purpose was to prevent future accumulations, first by limiting the jurisdiction of the Court of Appeals; but we did not stop there. The Judiciary Committee of 1894 recommended an increase of the judges of the Court of Appeals from seven to nine. That brought on a great debate in the Convention. The Convention, under the leadership of Mr. Elon R. Brown, whose letter was read to us the other day by the Clerk, and with the assistance of the President of the Convention, who came down from his seat and took part in the debate succeeded in defeating the proposal of the Committee with regard to the increase of the judges of the Court of Appeals, and kept the number seven in the court. So that if you are disposed to find fault with what was done in 1894, you must at least recollect that the Committee recommended an increase in the judges of the Court of Appeals, and we were voted down in the Convention. What happened? Just what we

expected. The Court of Appeals began to run behind. Cases began to accumulate. It began to take, first, two years and more, to get through the Court of Appeals. So that in the year 1899 the Constitution was amended, and the Court of Appeals was increased from seven to eleven, and that for the purpose of disposing of the existing accumulations.

Article VI of the present Constitution, adopted November 7, 1899, provides: "Whenever and as often as a majority of the judges of the court of appeals shall certify to the governor that said court is unable, by reason of the accumulation of causes pending therein, to hear and dispose of the same with reasonable speed, the governor shall designate not more than four justices of the supreme court to serve as associate justices of the court of appeals." That power the Court of Appeals has had ever since 1899, but it exercised it only to the extent of calling three judges and not four judges into the court, because, I suppose, they found it quite as convenient to dispose of the business with ten as they would with eleven judges, at least that is the explanation I have heard made of the subject. Now that has been the situation since the year 1899, about sixteen years ago, and the Court of Appeals, with ten judges, from that time has undertaken to dispose of the constantly increasing number of appeals. Notwithstanding the limitations imposed upon the jurisdiction of the Court of Appeals by the Convention of 1894, and the limitations of its jurisdiction as to questions of law, the appeals have gone on in a manner altogether unexpected by the framers of that Convention. What do we find at present? We find at present there are upwards of 600 cases in the Court of Appeals and that it takes an appeal at least two years after it is perfected before it can be heard and determined in the Court of Appeals. I asked the presiding judge of the Court of Appeals who came before the committee how long he thought it would take if we adopted his suggestion of limiting the jurisdiction of the Court of Appeals so that no appeal could be brought up except on a question of law and then by certiorari — how long it would take to dispose of the present arrearage, and the best estimate that he could make was something in the neighborhood of over two years, without making any allowance for the fact that appeals are increasing all the time. So the question which the committee had before it was, what were they to do? Were they to do nothing? Some gentlemen said, "Do nothing. Let it run. It is not such a very great hardship if you do not get through the court of appeals in two or three years". Others suggested taking the view of the Chief Judge, that it would work itself out if we limited the Court of Appeals by certiorari to questions of law. That, of course, was what the Constitution of

1846 did. It did nothing, although the certainty of congestion was pointed out. Then the next question was, should we adopt a commission of the Court of Appeals, such as they had from 1869 to 1872? The difficulty about the commission was, as was the difficulty with regard to the second division of the Court of Appeals, that, instead of having a central court existing for the purpose of harmonizing decisions and making the law clear and certain, we had two courts of last resort. An examination shows that their opinions were often in conflict. Then we found, from the testimony of lawyers and judges, as well as from our own experience, that both suitors and lawyers objected to going before a court which, although called a court of last resort, was not really a court of appeals. Therefore it became necessary for us to devise some machinery to which resort might be made, when these accumulations were found to be so great that a proper administration demanded that they should be disposed of and the business brought up to date.

Now that machinery is found in this section of the Constitution and we have tried to profit by the experience of the Constitutions of 1846, 1867 and 1894 and to meet the objections made by judges and lawyers to the difficulties surrounding the second division of the Court of Appeals and the Commission of Appeals. Now, what have we done? In the first place, we have continued the present number of the Court of Appeals judges. That is, we have increased the court under this provision from seven judges to ten judges, making those judges who are now sitting there, judges of the Supreme Court, judges of the Court of Appeals. Then, we have provided in order to meet a difficulty emphasized by almost all of the judges of the Court of Appeals and the Appellate Divisions, that in case of any temporary disability, on account of overwork or sickness occurring for a period of time, the judges of the Court of Appeals may draw in from the Supreme Court a judge to take the place of the disabled member, but not for longer than four months in a year. Now, how have we disposed of the accumulation? Instead of having two courts of last resort, we have provided two parts in the court of last resort. That has been accomplished by authorizing the judges of the Court of Appeals to bring to the court on or before the first day of March, not less than four or more than six judges, and they are to sit in that court until only two hundred cases remain. Here we were met with the suggestion that unless we fix some time limit the cases would never be reduced to two hundred, and so we followed the experience of the Constitution of 1867 which provided that the commission of appeals could not sit longer than three years, and in our amendment we suggest and provide that the

courts shall not sit in the first instance later than the 31st day of March, one thousand, nine hundred and seventeen. It seems to us that if the court was brought into being in March, 1916, and sat during the year 1916, and until the first day of December, 1917, it ought to be able to dispose of these accumulations. During this period it is to sit in two parts, and those parts are to be constituted by the chief justice who is directed to assign to each part an equal number of the elected judges of the Court of Appeals and of judges brought there from the Supreme Court. So that no man will complain that he is going before a court composed, although nominally the Court of Appeals, composed of only Supreme Court judges. He will be before a court composed almost equally of judges of the Court of Appeals and judges of the Supreme Court. The causes on appeal are to be equally divided between the two parts. Now, the chief judge is expected by this article to be the administrative head of the court. We look to him to prevent those conflicts between the two divisions, or two parts, which existed between the second division and a commission of appeals.

He may sit in either part and he is given power to designate one of his associate judges who may sit as chief judge, in the part in which the elected chief judge does not sit. Now, by that means we expect to dispose of the accumulated cases and to bring the Court of Appeals reasonably up to date, so that a person can get a hearing there certainly within three or four months after the decision of the Appellate Division. But, experience has told us that even when we do that, we are not at the end of the necessary reform. We have to provide in this article some means for re-establishing the two parts of the court when the accumulations begin again, and, therefore, it is provided that the Court of Appeals shall publish a calendar once each year and whenever on the first day of January of any year there shall be found five hundred cases on the calendar, then the courts shall, in the manner which I have already indicated, proceed to summon the judges of the Supreme Court, again divide itself into two divisions and continue to dispose of cases until they have reduced them to two hundred. But even then they are not given the opportunity to sit indefinitely, because we have provided that they must conclude their labors in one year from the date of designation. Now, in case of any death, or resignation or any other disability of the associate justices, the Court of Appeals is authorized to designate a justice of the Supreme Court to serve in his place as if originally so designated, and that upon the termination of these designations they shall return to their respective districts or to their respective Appellate Divisions, from which they have been chosen.

Now, gentlemen, we have made that article in the light of experience and after listening to the great number of judges of the courts in this State and many members of the Bar; and we think we have devised a piece of judicial machinery which takes advantage of the experience of our ancestors in former Constitutional Conventions. I may say in this connection that in the Convention of 1894 the same subject was discussed, and, as I recollect it, Mr. Dickey of Newburgh, afterwards Mr. Justice Dickey, proposed that we should incorporate in that judicial article of 1894 some provision for disposing of accumulated cases. He pointed out in very much the same way I have done what the history had been, and said with a great deal of emphasis that even if our judiciary article was likely to work in the way that we thought it would do that it would still be a safer thing to include that provision in the Constitution for disposing of arrearages. That was voted down, and so we were left from 1894 until the present time without any means of disposing of back cases except by the amendment of 1899, increasing the judges from seven to ten.

Mr. Bayes — Mr. Chairman, I desire to hand up the following amendments and ask that they be read.

The Secretary — By Mr. Bayes: Page 14, line 2, strike out "two" and insert in lieu thereof "one".

Mr. Wickersham — Mr. Chairman, I think that is entirely unobjectionable because there is a time limit.

Mr. D. Nicoll — You mean to make the same amendment later on?

Mr. Bayes — I mean this, Mr. Nicoll, as I have computed it from the calendar of cases undisposed of in the Court of Appeals, at the present time it is 622, when the calendar has been reduced to 200 cases the Court of Appeals will have ahead of it about five months' work. We must bear in mind that there has already been a long delay before we reach the Court of Appeals, and my purpose here is to cut the 200 in two so that these parts will continue to sit so that the delay there shall amount to about two and a half months instead of five months.

Mr. Nicoll — We see no objection to that; we are glad to have the suggestion. You mean 200 on the calendar and not in the court.

Mr. Bayes — If the amendment is read again, I think you can follow it and get the idea.

The Chairman — There are other amendments and perhaps we had better read all the amendments.

The Secretary — Page 14, line 2, strike out "two" and insert in lieu thereof "one". Page 14, line 4, strike out "seventeen" and insert in lieu thereof "eighteen". Page 14, line 25, strike

out " five " and insert in lieu thereof " two ". Page 15, line 4, strike out " two " and insert in place thereof " one ". Page 15, line 5, strike out " one year " and insert in place thereof " two years ".

Mr. Bayes — Mr. Chairman, at the suggestion of Mr. Wickersham, I will withdraw the second amendment, page 14, line 4, strike out " seventeen " and insert in lieu thereof " eighteen ". I will also withdraw the last amendment, page 15, line 5, strike out " one year " and insert in lieu thereof " two years "; that also is withdrawn.

Mr. Buxbaum — On page 14, I believe Mr. Bayes' proposed amendment would be in better form if he would say, on line 2, " pending ", just as they do on page 15, " on the calendar ".

Mr. Wickersham — Yes! Yes!

Mr. Buxbaum — I think that as it is now, it would include cases which have been argued but not yet decided by the Court of Appeals.

The Chairman — That is an amendment by inserting after the word " pending " in line 2, page 14, the words " on the calendar ". Is that right?

Mr. Buxbaum — In place of the words " undisposed of in the court ".

The Chairman — It is, as I understand it, on page 14, line 2, in place of the words " undisposed of in the court " insert the words " on the calendar ".

Mr. Buxbaum —"Pending on the calendar ".

Mr. D. Nicoll — " Pending " is here.

Mr. Buxbaum — " Pending " is here. " On the calendar."

Mr. Deyo — " Undisposed of " should be in there.

Mr. Buxbaum — May I ask Mr. Nicoll through the Chair for the reason why the Appellate Division is given in this section the right to designate a justice to sit as an associate member of the Appellate Division during the absence, or while one of the other members is sitting in the Court of Appeals?

Mr. D. Nicoll — Because that is a purely temporary matter, it is not necessary to go to the Governor.

Mr. Buxbaum — It seems to be inconsistent with the other parts of the same article.

Mr. D. Nicoll — It is only temporary. We do not desire to have two divisions, permanently, of this court. In fact, we do not want them at all. Nobody wants them. We want to get rid of them as fast as we can.

Mr. Buxbaum — Now, on page 13, Mr. Chairman, I read, lines 16, 17 and so on; " In case of the temporary absence or inability to act of any judge of the court of appeals " — what would happen if two or more judges were unable to act?

Mr. D. Nicoll — That covers it; "any" is plural as well as singular.

Mr. Buxbaum — I don't think that covers it, because you say on line 18: "The court may designate any justice of the Supreme Court to serve as associate judge."

Mr. D. Nicoll — They probably would not both be disabled on the same day.

Mr. Buxbaum — I thought I would call your attention to it.

Mr. D. Nicoll — We thought of it.

Mr. Reeves — I want to ask Mr. Nicoll a question with regard to putting the words "on the calendar" in there. The court of appeals may shorten its calendar from time to time and there will be cases pending there. For example, they have at present some six hundred and odd cases but not all on the calendar. Are you going to cover it by the amendment Mr. Buxbaum suggested?

Mr. D. Nicoll — You see, we covered that by the provision requiring the Court of Appeals to make and publish a calendar the first of the year. They will have to publish a new calendar the first of January, 1916, if this Constitution is adopted.

Mr. Austin — I note that you have provided for the designation of not less than four and not more than six justices of the Supreme Court to sit upon the Court of Appeals; six being designated that would make sixteen judges. Now, you say that while this number is sitting the Court of Appeals shall sit in two parts, each of which shall consist of not more than two judges. Now that is fourteen.

Mr. D. Nicoll — There would be only fourteen if they only designated four.

Mr. Austin — But if they designated six, what is going to become of the other two?

Mr. D. Nicoll — Then there would be two judges who would be writing opinions.

Mr. Austin — They would not be assigned to either part.

Mr. D. Nicoll — They would be helping the others out while seven were sitting, just as they do now.

Mr. Austin — It doesn't appeal to me that each part shall consist of not more than seven judges.

Mr. D. Nicoll — You omit, Mr. Austin, the words in line 13, seven judges to sit in the respective parts.

Mr. Austin — It says: "the court of appeals shall sit in two parts, each of which shall consist of not more than seven judges." Now, if there are not more than seven judges in each part, then you have got two surplus judges, the way I read it and the way it is worded.

Mr. D. Nicoll — We left that to the Court of Appeals. If they

only want four, they will take four, making fourteen. If they find that they can do better work by summoning six, they will take six. Then seven will sit in each part and there will be two judges helping out with decisions, sitting in rotation.

Mr. Austin — I understand that, but I claim that the two provisions are inconsistent. If you wish to say that they shall sit in two parts, with an equal number of judges in each part, all right; but when you say specifically that not more than seven judges can sit in each part, that is a total of fourteen judges.

Mr. D. Nicoll —At the same time.

Mr. Austin — You do not say anything about " the same time." You say that not more than seven shall sit in each part.

Mr. D. Nicoll — I think that is a little hypercritical.

Mr. Bayes —At the suggestion of Mr. Wickersham, I desire to withdraw the third amendment, page 14, line 25, strike out " five " and insert in lieu thereof " two ", so there remains simply the first and the fourth amendments.

Mr. D. Nicoll — You mean you have withdrawn that? Have you withdrawn that amendment?

Mr. Bayes — I have withdrawn three of the five amendments.

Mr. D. Nicoll — Have you withdrawn the amendment about the 500 cases?

Mr. Bayes — Yes, I have withdrawn that. The effect of this, gentlemen, will be this: Once the Court of Appeals in its two parts has assembled, the calendar will be reduced until there are about 100 cases, and that means that the Court of Appeals will then be in arrears about two and a half months. I think that is a reasonable provision. I think that will, in a measure, remove the complaint that has been made, not simply by attorneys but frequently by litigants, the complaint that after waiting a year and a half from the time the action is started until you are reached for trial in the trial court, and then waiting for from seven months to a year for a determination in the Appellate Division, one must also wait one or two years in the Court of Appeals. I want to say to the few members of this Convention who may not happen to be attorneys that it is necessary that the record be printed, which includes the stenographic minutes of the evidence taken at the trial, together with a copy of the pleadings and of the judgment. In addition to that, the attorneys prepare and print briefs, which are submitted by both sides in connection with their argument, if oral argument be had before the Appellate Division. So that, after a delay of from at least a year and a half to two and a half years before you reach the Court of Appeals, may not one say we have had delay enough? The Judiciary Committee, through its chairman, called our attention to the fact that the Appellate Division

of the first department is practically up to date. I am sure the Court of Appeals would give greater satisfaction throughout the State if some method could be devised by which its work could be kept practically up to date. I think this will help and therefore we ought to support it.

The Chairman — The question occurs on the amendments. Those in the affirmative will say Aye, opposed, No. The amendments are adopted. Now the amendment offered by Mr. Buxbaum. Page 14, line 2,—

The Secretary — Page 14, line 2, strike out " undisposed of in the court " and insert in place thereof " on the calendar ".

The Chairman — The question occurs on that amendment. Those in favor will signify by saying Aye, opposed No. It is adopted. The question now occurs on the adoption of Section 9.

Mr. Austin — No, Mr. Chairman, I want to move on page 14, line 8, strike out the word " more " and insert in place thereof " less "—" each of which shall consist of not *less* than ", etc., " shall form a quorum ".

Mr. Marshall — Well, Mr. Chairman, that won't do; you might have a Court of Appeals with nine, it may mean more than seven, you may have eight or nine or get the whole fourteen to sit in one part.

Mr. Austin — Well, I am perfectly well satisfied with the division, but I claim this, that where you in your Constitution say that each part of the court shall consist of not more than seven judges, you limit the number of judges absolutely that can be assigned to that part and that makes a total of fourteen judges, and it is inconsistent with the provision which authorizes a whole court of sixteen members.

Mr. Marshall —As one who is not particularly enamored of having the court sit in two parts, it yet seems to me there is no difficulty in the situation: You have one court, and it will consist of fourteen or sixteen judges and that court, therefore, will have so many men to dispose of the work. They will sit in two parts, because you cannot work in town meeting. To-day they have ten judges and no more than seven sitting and the other three are kept in reserve to substitute for judges who leave the court for the purpose of writing opinions or otherwise. Here we have either fourteen or sixteen and you will have not more than seven in the two parts, and if you have sixteen judges you will have two in reserve who will take the places of the judges who reside in part one or part two. In other words, if you have sixteen, you will have two judges who may be called in to fill out temporary vacancies in the court or such as are occasioned either by sickness, or disability, or because a judge has an important opinion to write and is

required to leave the court to do the work in chambers. But it seems to me the phraseology is all right. In the first Constitution you will read "seven judges",— there are not two independent courts of appeal, Mr. Austin, it is one court of appeal with sixteen judges to draw from. Now they are divided into two platoons, part one and part two, if you please. Nevertheless it is the Court of Appeals, and not more than seven shall sit in any part. If you put it "less", that makes it possible to make it more.

Mr. Austin — To my mind, it is perfectly clear that this provision provides for two extra unassigned judges, if sixteen are named. If the Convention thinks that this language is consistent I shall do nothing except raise that point and let a vote be taken.

Mr. Latson — Mr. Chairman, may I offer a suggestion to both Mr. Marshall and Mr. Austin?

We find on page 13, line 13, the statement that "no more than seven judges shall sit in any case"—

Mr. Marshall — I had just referred to that, Mr. Latson.

Mr. Latson — I did not hear you, Mr. Marshall; but I was going to suggest that Mr. Austin's difficulty would be overcome if lines 7 and 8 read, "shall consist of two parts of not more than seven judges each." The difference being between the number forming a part and the number sitting.

Mr. D. Nicoll — Mr. Chairman, I think it is as clear as can be. I call for the question.

The Chairman — Does Mr. Austin offer the amendment?

Mr. Austin — I certainly do.

The Chairman — The question occurs on the amendment offered by Mr. Austin. The Clerk will read.

The Secretary — On page 14, line 8, strike out the word "more" and insert in place thereof the word "less."

The Chairman — The question is on the amendment. Those in favor will signify by saying Aye. Those opposed, No. The amendment is defeated.

The question occurs now on the adoption of section 9. Those in favor will signify by saying Aye, opposed, No. The section is adopted.

The Clerk will proceed to the reading of section 10.

The Secretary — Section 10. When a vacancy shall occur otherwise than by expiration of term, in the office of chief or associate judge of the Court of Appeals, the same shall be filled, for a full term, at the next general election happening not less than three months after such vacancy occurs, and until the vacancy

shall be so filled, the Governor, by and with the advice and consent of the Senate, if the Senate shall be in session, or if not in session the Governor may fill such vacancy by appointment. If any such appointment of chief judge shall be made from among the associate judges, a temporary appointment of associate judge shall be made in like manner; but in such case, the person appointed chief judge shall not be deemed to vacate his office of associate judge any longer than until the expiration of his appointment as chief judge. The powers and jurisdiction of the court shall not be suspended for want of appointment or election, when the number of judges is sufficient to constitute a quorum. All appointments under this section shall continue until and including the last day of December next after the election at which the vacancy shall be filled.

Mr. Dunlap — Mr. Chairman, section 10 is not changed at all. There is no necessity of reading it, is there?

The Chairman — It must be considered section by section unless the committee makes some other disposition.

Mr. Wickersham — I move that it be adopted as printed.

The Chairman — The question is on the motion of Mr. Wickersham that the section be adopted as printed. Those in favor will signify by saying Aye. Those opposed, No. The motion is carried. Section 11.

The Secretary — Section 11. After the last day of December, one thousand nine hundred and fifteen, the jurisdiction of the Court of Appeals, except where the judgment is of death, or where the Appellate Division on reversing or modifying a judgment makes new findings of fact and renders judgment thereon, shall be limited to the review of questions of law. Appeals may be taken as of right to the Court of Appeals in the following cases only: (1) Where the judgment is of death; (2) From a judgment or order entered upon the decision of an Appellate Division of the Supreme Court which finally determines an action or special proceeding where is directly involved the construction of the Constitution of the State or of the United States, or where one or more of the justices who heard the case dissents from the decision of the court, or where the judgment of the Trial Court is reversed or modified; (3) From an order granting a new trial where the appellant stipulates that upon affirmance judgment absolute shall be rendered against him. The Court of Appeals may, however, allow an appeal in any case where in its opinion a question of law is involved, which ought to be reviewed. The Legislature may further restrict the jurisdiction of the Court of Appeals and the right of appeal thereto, but the right to appeal shall not depend upon the amount involved. The provisions of

this section shall not apply to appeals taken to the Court of Appeals before the last day of December, one thousand nine hundred and fifteen, but the judgments or orders appealed from shall be reviewed under existing provisions of law. The Court of Appeals may determine the qualifications and prescribe the rules regulating the admission to practice of attorneys and counselors in the courts of the State.

Mr. Marshall — Mr. Chairman, this section defines the jurisdiction of the Court of Appeals. It makes some changes in the existing Section 9 which deals with the same subject. The Committee has given very careful thought and consideration to this section and its phraseology was arrived at after very painstaking debate and after a very careful consideration of the decision and a study of the conditions which apply to appeals to the Court of Appeals. The Committee have in mind the fact that the Constitutional Convention of 1894, following out the policy which had gradually been adopted in this State with respect to the court of last resort had concluded that the Court of Appeals should be considered as essentially a court of law, but bore in mind the fact that we had in this State a condition which was not to be found in any other State in the union except to a very measurable extent, namely that there existed a Court of Appeals known as the General Term in the olden days, and as the Appellate Division since 1894, in which every litigant had the right to have his case reviewed both as to law and as to the facts. It carries out that policy on account of the large population in this State, and the large number of cases which come to the Court of Appeals of first instance, the Appellate Division. It was necessary to divide that court into parts or divisions, so that we were practically obliged to have four Courts of Appeals of first instance. Those courts answer the function of the Supreme Court or the court of last resort in the other States of the union, as for instance, in such great jurisdictions as Massachusetts, Illinois, Ohio, and California. There the appellant went to the court of last resort and that was the end of his right of appeal. That court necessarily was a court that had plenary power of review. In this State, however, in view of the fact that we had these four divisions, which rendered it likely that there might be divergence of opinion on questions of law among the judges in those four different divisions, it was felt that there should be a court above those four courts, known as the Court of Appeals.

After 1846, the State was divided into eight districts and for many years after 1846 there was an Appellate Division held in each district, and in order to reconcile the differences of opinion on questions of law in those districts it was necessary to have the

Court of Appeals and after the district system was abolished in 1869, and the department was introduced and the general terms were created, the same reason required that there should be a Court of Appeals to reconcile the difference in those different terms, and that same theory was maintained in 1894. For that reason it is very evident that the Court of Appeals in order to be effective in its work would be a court of limited jurisdiction, because it follows, necessarily, that every case taken to the Appellate Division might be taken to the Court of Appeals without restriction as to the character of the question which might be reviewed, why it might be only another right of appeal and another opportunity to argue the case before another tribunal and it would be clearly necessary to have a very large court, and in time the Court of Appeals would necessarily under such a theory become divided into two, three or four parts just as the Appellate Division. Therefore, it was very certain that if the Court of Appeals was not to be limited, as I have stated, you might as well have done away with the Appellate Division and appealed directly in the first instance from the Court of Appeals and have done away with the Court of Appeals and terminated your review with the Appellate Division. Now, every man has a right to one review of his case. I think that is a reasonable principle. He has no reasonable right to more than one review. He ought not to have the right to more than one review on questions of fact, except in extra cases, some of which I will refer to presently, because if that were not the fact the court of last resort would soon lose its character as a court of law, a court for the settlement of legal questions and would be merely the same kind of court as a court of first instance and the Appellate Division, because the same class of questions would be argued and you might go on to infinity, one court above another, in which the same questions might be argued and reargued and argued again. Therefore, I think that the policy which has hitherto prevailed in this State regarding the Court of Appeals as a court of law is one well founded and which is recognized to be a proper distinction.

There is, however, a certain class of cases in which a different view must necessarily prevail and that is a class of cases in which there has been no intermediate review of the facts, or where new questions of fact are raised or presented for the first time in the Appellate Division. Among these cases which are thus exceptional are the cases where the judgment is of death. Capital cases. Under the policy which has prevailed in this State of late years, for some twenty-five years, in a capital case, where sentence of death is pronounced, the appeal goes directly from the Trial Court to the Court of Appeals. There is no intermediate appeal

to the Appellate Division, therefore, it stands to reason that it is important, not only important, but a matter of right that the appellant in such a case shall be given the right of review, not only on questions of law but also questions of fact. That was recognized in the Constitution of 1894. Now, in the last two or three years, a new class of cases has arisen in this State, where a similar reason exists for affording the right to review facts as well as law. That is all the cases which have arisen under the rule adopted by the Legislature which amended Section 1317 of the Code of Civil Procedure, and which has application to equity cases, which, as we all know, sometimes involve the most important litigations that can possibly arise. Under that amendment the Appellate Division was for the first time given the right not only to reverse the judgment of a court of first instance rendered at Special Term, but to disregard the findings made by the Special Term, to make entirely new findings, to treat the case *de novo* and to render judgment, final judgment in favor of a party other than the party who prevailed in the court of first instance. Under the old system where error was found in such a case, the court would reverse and send the case back for a new trial and then the parties would have their opportunity to try the case *de novo* and present new evidence or present to the court anew their contentions with regard to the law and to the facts. But under this new procedure the court is enabled to disregard what has gone before, to render an entirely different judgment, to make entirely new findings, to deprive the party of his new trial which he formerly had, and the Committee can see that the situation in these cases was so exceptional, the nature of the case so important, the fact that the Appellate Division acted practically as a court of first instance, that it was only the part of right and justice that the defeated party should be enabled to go to the Court of Appeals and there review the case, both on the facts and on the law. You see that there is an exceptional situation, where practically a judgment is initiating a new proceeding, which takes its genesis in the Appellate Division. Now, under the Constitution of 1894 a principle was laid down to the effect that no unanimous decision of the Appellate Division of the Supreme Court that there is evidence supporting or tending to sustain a finding of fact or a verdict not directed by the court, shall be reviewed by the Court of Appeals. In other words, if the court made a finding that the fact was A, and the finding had been affirmed by the Appellate Division, even though the finding might be not A, but B, the Court of Appeals was not permitted to consider the question as to whether the evidence sustained facts A or not, whether there was any evidence to sustain that finding, as well as whether the evidence sustained it.

And so the court, acting under this theory, in a number of cases which arose shortly after the new Constitution went into effect, went so far as to hold in a negligence case, for instance, as to whether or not there was negligence — they held it could not be reviewed if there was unanimous affirmance even though it might have been said on a careful examination of the record that there was no evidence whatever to sustain the finding of negligence. There was much discontent with that situation; whether justly or not, it is not necessary to go into details. But, suffice it to say, the general consensus of the bar at the present time, and the opinions of the judges themselves now, is very strongly indicated that it is not well to continue this rule which was adopted in 1894, and the committee has deemed it desirable, taking all the considerations into account, to advise that that provision be eliminated. The fact that the judges of the Court of Appeals themselves have come before the committee and have advised the elimination of that provision is a very strong argument in favor of the proposition that it should be eliminated, because it certainly will add to the labors of the court to investigate the record to find whether or not there is in a given case evidence to sustain a finding made below. That, to my mind, is the most potent argument in favor of the adoption of the decision rendered by the committee. Having, therefore, disposed of the question as to the general character of the court, as a court of law, and having eliminated the provision of the old Constitution which limits the power of the court as to the determination of what is a question of law under given circumstances, we come to the question of what appeals may be taken, as of right, to the Court of Appeals. There was some argument to the effect that in no case should an appeal be permitted except when allowed by the court. But it was thought that, although much could be said in favor of that policy, the people of this State were not prepared for its adoption; that they had no experience which would justify them in entering upon such an experiment, but that it was desirable to follow on the lines of our past experience and permit certain cases to be taken to the Court of Appeals, as of right. Now what should those cases be? Naturally, in the first instance, cases where the judgment is death. That requires no discussion. In the second place, an appeal from a judgment or order entered upon the decision of an Appellate Division which would finally determine an action or special proceeding where it involved the construction of the Constitution of the State, or of the United States. I do not think that anybody can doubt the wisdom of such a rule. Whether there is unanimous affirmance or not, in such a case it is highly desirable that a case which involves the constitutionality of a

law shall be permitted, in any event, to go to the Court of Appeals, because, if there is any function which the Court of Appeals should perform, it is that of determining the constitutionality of legislation or of an act of any character. Now it is true that in many instances those appeals are taken from unanimous judgments of the Appellate Divisions, unanimously affirming the Court of first instance, but we all know that the policy has been in this State, save in extraordinary cases, for the court of first instance, as a matter of course, to decide in favor of the constitutionality of any law. Many Appellate Divisions rather follow that same practice, preferring to leave the determination of the constitutionality of questions to the Court of Appeals. At any rate, the Court of Appeals should be called upon to pass upon those questions.

Then came another case where one or more of the justices who heard the case dissent from the decision of the court, or where the judgment of a trial court is reversed or modified. Therefore you have at once a situation which indicates that there is diversity of opinion upon the fundamental legal questions of the case. If the court of first instance, the trial court, has been reversed, or its judgment has been modified, or the Appellate Division, even though it may affirm, has developed a variety of opinions and a dissent is expressed by one or more of the judges, such a case naturally indicates when it should be reviewed by the Court of Appeals because the Court of Appeals is a court of reconciliation, as to questions of law, as to adverse opinions as to questions of law. Then comes the third class, " from an order granting a new trial where the appellant stipulates that upon affirmance judgment absolute shall be rendered against him." That we find in our present Constitution and that has been the policy which has long existed, and that is a practice which should be encouraged, because it tends to the speedy determination of actions, and it discourages the going back for retrial and the protraction of litigation, and enables the court of appeals to determine which of the two courts that have passed upon the question and which differ from one another is correct. Then comes the next provision which is general in its scope and application and that is that " The court of appeals may, however, allow an appeal in any case where in its opinion a question of law is involved, which ought to be reviewed." In other words after having disposed of these cases, where there is an exceptional condition, such as I have instanced, in relation to judgment of death and these cases where there is divergence of opinion between the trial court and the appellate division or some judges of the appellate division and the trial court, there is a considerable number of cases where there has been a unanimous

opinion of the trial court. Now, those cases may, and sometimes, I might say, often do, involve questions of law; important questions of law. Yet, it must not be left to the litigant to determine what cases of that category should be taken to the court of appeals, because if it were left to the litigant he would at once say that his case involves the most important question of law that has been presented to any tribunal that has ever existed, not only the court of appeals, but, as I said the other day, to the United States Supreme Court and to a court which is often higher than the Supreme Court of the United States. Therefore, somebody must be permitted to determine that the question other than the litigant and his counsel and it has been felt that the proper tribunal to determine that question is the court of appeals itself, and in that respect we are following the practice which has been time honored, and which has been tested, in many jurisdictions, and which has been found in the large majority of cases to be a very safe and satisfactory method of review. Now, under the old system all cases were taken up by writ of error, or by an appeal allowed, and generally allowed by a higher court, and in those cases the court went into the records sufficiently to indicate whether or not there was a question fit to be reviewed.

That practice still obtains in many States of the Union and that is the practice which is in operation now with respect to appeals to the Supreme Court of the United States. There, as we all know, certain cases will terminate when the circuit court of appeals has spoken, unless the Supreme Court of the United States certifies that the case is one which should be taken into its jurisdiction. That is done by an application for a writ of certiorari. The record is sent to the court together with the petition in which are stated the questions of law which it is believed should be determined by the Supreme Court of the United States and the argument on the subject which is sometimes very elaborate and therefore dangerous, and sometimes very concise and therefore very apt to be successful, in which case the court is given an opportunity to consider the record and then determine whether or not an appeal should be allowed. Now, under that procedure, which has now been followed since 1891 in the United States Supreme Court, twenty-four years, there has been developed a practice, which in the main has operated very successfully. Every case is considered by every judge of the court, so that as a matter of fact, every litigant has an opportunity of having the mind of the court directed to his case, and if it is a case, as most cases absolutely are, a case which involves no important question of law, no question which is of importance to general jurisprudence, why then the court denies the application for a writ.

If, however, there is any important question, as for instance, the interpretation of a general statute, a question with regard to commercial policy some great question with respect to the general jurisprudence the Supreme Court of the United States grants a writ of certiorari, and then the case is argued in the ordinary court. Now, the opinion of your Committee was that that practice could be easily adapted to our situation. When the question was asked of various members of the Court of Appeals, and particularly ex-members of the Court of Appeals, as to how such a procedure would operate in that court. Among the judges to express themselves upon this subject, were ex-Judge Cullen and Judge Vann and Judge Andrews, and some of the present judges, like Judge Werner, and I think, the Chief Judge, Bartlett, they also indicated that there would be absolutely no difficulty in dealing with this matter, that it would not greatly embarrass the court, that it would not occupy too much time of the court, so it would deprive it of the ability to transact its business, and at the same time absolute justice could be done to the litigant; because in every case when it comes down to the Court of Appeals, there is practically left but one or two questions, at the most three questions, which are worthy of consideration. A lawyer when he tries his case raises objection to every question that he can, so that he may get on the record as many objections as possible, takes exception to everything, every rule, strikes around with the hope that he may get something that will help him in days of stress, but when he sees the cold record, when he reaches the cold, gray dawn of the morning after, he begins to see that there is not such great virtue in the exception which he thought was absolutely unanswerable, and when he gets down to the real meat of the case it involves but few questions, and any lawyer who is arguing a case in the Court of Appeals who cannot settle that question and arrive at the real meat of the record and the questions which are applicable to his case, and compress it within half a dozen typewritten lines, is not fit to argue a case in the Court of Appeals; and a judge of the Court of Appeals who cannot on such an application determine whether there is anything in the way of questions involved which ought to be reviewed is not fit to sit as judge in the Court of Appeals.

It is remarkable how the judges of the Appellate Court become apt after a number of years on the bench. I remember the late Chief Judge Ruger, who was a great jurist, said that after he had been in the Court of Appeals less than six moths, it was a matter of astonishment as to how such judges as Judge Earl, or Andrews or Rapallo, could, as he termed it, skim a record in almost a twinkle of an eye. While he was entering the case upon

his register they had already discovered by a hasty examination of the record what the real question in the case was, and it took him some time before he became thus expert, and that is true in the Appellate Division. We all see it when we argue cases before that court, and it is true in the Court of Appeals, and in this class of cases it would work out in the same way. The court would not decide the cases, but they could tell whether there was anything worth arguing, or that they considered worth arguing, and you can rest assured that the court will not hesitate to allow an appeal where it should be taken. So that the real situation which we have before us is this, the litigants of this State have a better opportunity of having their cases better considered than they have ever had for many years at least, and it gives them, as I have said, not only a review of their case in the Appellate Division, but in the Court of Appeals whenever they make this application for leave to go to the Court of Appeals. The actual review, however, the formal review, depends upon the allowance of an appeal, and as I have said, that would necessarily be limited in cases which are worthy of being reviewed by that court and which should be taken to that court. The suggestion has been made that the right to allow that appeal should be given, not only to the Court of Appeals, but to the Appellate Division. And the Committee was strongly of the opinion on reflection that that would be very unwise. We know that the Appellate Division, as men are constituted, would be apt to say, "No, this case is all right; there is nothing to go to the Court of Appeals in respect to this case. We will leave it as it is." When that court has attempted to do that, our experience has been in those cases where the Court of Appeals may now allow an appeal where the Appellate Division does not allow it, in negligence cases and cases of that sort, why, the court is apt to say. "The Appellate Division has denied it. There is no use in going into it further. This is not a case where we should spend much time." There would be a division of responsibility, with the consequence that the litigant would fare far worse than he would if it were left to the Court of Appeals to determine that proposition. So that the Committee feels that in inserting this provision there has been a distinct advance in our procedure in respect to appeals to the Court of Appeals. The old provision remains, that "The legislature may further restrict the jurisdiction of the Court of Appeals and the right of appeal thereto," and the rule is, and the intent, which I have the happiness to say I had the honor of writing into the Constitution of 1894, that "the right to appeal shall not depend upon the amount involved."

Mr. Buxbaum — Has there been any enactment in the law since

1894, any attempt by the Legislature to in any way restrict the jurisdiction of the Court of Appeals?

Mr. Marshall — Certainly. After 1894, the Legislature provided that where there is unanimous affirmance of a case, a negligence case, there could be no appeal taken to the Court of Appeals except by permission either of the Appellate Division or of the Court of Appeals; also in the cases involving questions of fraud, fraudulent disposition of property; also in cases involving actions to recover for services, all of which are referred to in Section 191 of the Code of Civil Procedure. Those, however, are the only instances in which an attempt was made to restrict the jurisdiction of the Court of Appeals. Then comes the statement that "The provisions of this section shall not apply to appeals taken to the Court of Appeals before the last day of December, 1915, but the judgments or orders appealed from shall be reviewed under existing provisions of law." That is merely a rule of interpretation.

Then comes the last provision. "The court of appeals may determine the qualifications and prescribe the rules regulating the admission to practice of attorneys and counselors in the courts of the State." As it is now, the Court of Appeals has that power, and has made those rules, and the only reason why this has been inserted in the Constitution is that from time to time, efforts have been made in the Legislature to break down the system as to qualifications for admission to the bar, which has been created by the Court of Appeals, attempts have been made to permit A, B, C or D to be admitted to the bar by act of the Legislature, and it is feared that in the future some similar efforts might be made. And attention is also called to the fact that in a neighboring State, in Massachusetts, a statute has actually been passed which has broken down the protection afforded to the public in the adoption of rules by the highest court of the State as to the qualifications of members of the bar. And that unfortunate precedent might be followed in this State, and in order to forestall the possibility of such action, this provision has been inserted in the Constitution. There is no act of greater importance which can be performed by our courts than to hold up a strict rule with respect to the admission of applicants to membership in the bar. Those rules have been in the past reasonable and just. They have required some kind of intellectual and scholastic ability, some kind of character and some earnest that a man is to be admitted to practice the profession who is worthy of the profession and of becoming a member of it, that he is worthy of the trust and confidence which the public reposes in him. And if the rules were in any sense relaxed, the injury which would follow to the public at large and to the profession as well, would be inestimable, and I can only say

in conclusion that the Committee considers that no more important act can be performed by this Convention than to lay down such a principle in the Constitution.

Mr. Quigg — Well, Mr. Marshall, after we have put this last expression into the Constitution, a member of the Legislature, who introduced a bill like chapter 216, Laws of 1882, saying that a person may be admitted who has been prevented from passing the examination preliminary to graduation with the degree of Bachelor of Laws in any duly organized law school or law department of any university within this State, by reason of his necessary absence from such university while a member of the Legislature, would be checking its procedure.

Mr. Marshall — Yes, I have known of bills introduced in behalf of people who, because of the fact that they had been partly engaged in tending bar and partly in attending the Legislature, tried to be admitted by act of the Legislature. That was actually done.

Mr. Shipman — Is there anything in this latter language, Mr. Marshall, which, in your opinion, would prevent by exclusion the right of the Board of Regents to take some charge of the qualifications of the members of the bar? The reason why I say that is that we are concerned very much in raising the standards of all professional schools, whether of medicine, pharmacy, law or anything else.

Mr. Marshall — Mr. Chairman, I am glad this question has been asked. In the first place, there is no doubt that the Court of Appeals will be only too happy to act in conformity with any requirement of the Board of Regents. As a matter of history, I may say that I have the honor of having been the person who suggested to the Court of Appeals, shortly after Judge Ruger became chief judge of that Court, the requirement that no person should be permitted to begin the study of law before he had filed a certificate of proficiency, issued by the Regents of the State of New York. From that day, more than thirty years ago, down to the present time, that rule has been observed by the Court of Appeals. It is really one of the foundations of their present system of rules.

Mr. Shipman — I may say that Regent Moot, who is one of the compilers of the Short Practice Act, is in consultation with Chief Justice Bartlett on that subject now.

Mr. Marshall — There is no doubt that the Court of Appeals recognizes the absolute necessity of compliance with the requirements of the Board of Regents. I desire to offer an amendment merely for sake of clearness. Line 7, page 18, after the word "order" there should be inserted the words "of an appellate

division of the Supreme Court," so that it reads "from an order of an Appellate Division of the Supreme Court granting a new trial," etc. I think that is implied, reading it in connection with the previous paragraph, but there should be no doubt about it.

Mr. Lindsay — I am a little mixed on this provision on page 18, the last clause, giving the absolute right of appeals under that heading, "or where the judgment of the trial court is reversed or modified". In the next paragraph it provides: "From an order granting a new trial where the appellant stipulates that upon affirmance judgment absolute shall be rendered against him". Now, in both cases,— in one case absolute power of appeal is given and in the other only by stipulation.

Mr. Marshall — In the one case there is a final judgment rendered; the judgment of the court is reversed or modified. For example, take the case of a judgment in favor of the plaintiff in the Trial Court. The Appellate Division reverses it and gives judgment in favor of the defendant or modifies the judgment, but in other respects affirms it. In that case there is no necessity of stipulation for judgment absolute under our provisions, nor would it amount to anything, because you have made judgment anyway — it is going to be one thing or another. On the other hand, if a trial is granted under our prevailing practice, which has been used for more than sixty years, the person who is defeated may take a new trial. If he does not choose to take a new trial and wants to go to the Courts of Appeals, then he must, as a condition of going there, stipulate for judgment absolute.

Mr. Lindsay — Suppose I take a case to the Court of Appeals and the judgment of the Trial Court is simply reversed. They always grant new trials wherever they reverse the case.

Mr. Marshall — No, they do not under this new procedure. Those are cases under the section which I called attention to.

Mr. Lindsay — What I wanted to get at is this, if you take a case to the Appellate Division and it reverses the case, they grant a new trial; then you have the right to appeal to the Court of Appeals absolute?

Mr. Marshall — Yes, but what they do besides reversing is to say that judgment for the plaintiff is reversed and judgment for the defendant is directed, or the recovery of ten thousand dollars is reversed and the judgment is reduced to five thousand dollars, or modified to that extent. That is the final judgment and that you can appeal from.

Mr. Franchot — Mr. Chairman, I would like to ask Mr. Marshall a question. Referring to the paragraph beginning on line 17 of page 18, I take it that the Committee made those changes from the point of view of good English, to correct the language of the

Constitution of 1894. I suggest a matter merely of phraseology. Do you not consider that the use of the word " and " in place of " but " in line 20 would be more appropriate?

Mr. Marshall — The word " but " is an inheritance from 1894.

Mr. Franchot — If the gentleman will yield again, no doubt the Committee has considered that a matter of supreme importance. If it is merely a suggestion of a change in phraseology, in the interest of good English. The word " but " is ordinarily considered to be a word of contrast or limitation.

Mr. Marshall — I think it is, in this case, a word of " contrast." In the first place, it says: " The provisions of this section shall not apply to appeals taken to the Court of Appeals before the first day of December, one thousand nine hundred and fifteen, but the judgments or orders appealed from shall be reviewed under existing provisions of law. I think, perhaps, " and " might be just as well — I think it is better to use " but "; I think there is a contrast.

Mr. Franchot — I move that substitution as an amendment so that I may have something to do with this article.

The Chairman — Mr. Franchot moves that in line 20, page 18, the word " but " be eliminated and the word " and " be substituted.

Mr. Marshall — I think it had better remain. I think it is better as it is.

Mr. Clearwater — It is a word of emphasis.

Mr. Franchot — I withdraw the amendment.

The Chairman — The amendment is withdrawn.

Mr. Bockes — My question is also upon the matter of phraseology, Mr. Marshall, the use of the word " where " in lines, 2, 4, 5, 7 and 11, on page 18. For instance, in the second line, the proposal reads: " actual or special proceeding where is directly involved the construction ",— I suppose it means " which involves directly ".

Mr. Marshall — That is what it is, but you see we use that form of expression all the way through the word " where ". That has been used all the way through in the old Constitution. You see you have to hark back to line 22 on page 17. "Appeals may be taken as of right to the Court of Appeals in the following cases only: 1. Where the judgment is of death; 2. From a judgment or order entered upon the decision of an appellate division of the supreme court which finally determines an action or special proceeding where is directly involved * * * or where one or more of the justices who heard the case * * * or where the judgment of the trial court is reversed or modified ".

Mr. Bockes — I understand.

Mr. Baldwin — Mr. Chairman, I have sent an amendment to the desk, which I would like to have read.

The Secretary — By Mr. Baldwin. In line 24, page 17, after the word "death" insert the words "or life imprisonment".

Mr. Baldwin — Mr. Chairman, I think there is one addition that should be made to the cases in which there is an appeal of right and that is in the case of life imprisonment, bearing in mind that our Bill of Rights Committee has recommended for adoption a constitutional provision which will give a jury the right on conviction for crime now punishable by death to impose by its verdict either the death penalty or life imprisonment, and, in the latter event, no pardon or commutation shall be granted unless the innocence of the person convicted be established. Now, life imprisonment, which is provided for by the recommendation of the Bill of Rights Committee, if it is adopted and becomes a part of our organic law, is a very severe penalty and I believe —

Mr. F. Martin — Mr. Baldwin, the Bill of Rights Committee, which has recommended that, is divided, I think, 6 to 5, and the report has not been acted upon.

Mr. Marshall — Irrespective of that, there is a complete answer to the proposition. Under the present provisions you can appeal to the Appellate Division in any case from a judgment which results in life imprisonment. A man would therefore have his right of review in the Appellate Division, and, if the case were one which involved questions of law which are important, then the Appellate Division would allow the case to go up. There would be no cause for the Court of Appeals to pass upon the facts. It is because of the amendment of the Code 20 years ago which took away the right of review in cases where the punishment was death, where the death sentence was imposed, that it became necessary to give the Court of Appeals the right of review in such cases. It was only for that reason. There was no intermediate right of appeal given. But, in the case of judgment imposing life imprisonment, under the present Code of Criminal Procedure there is a right to review of the facts as well as the law in the Appellate Division.

Mr. Baldwin — I was quite aware of the practice in criminal cases. My only question was to bring it before the Committee of the Whole, in view of the recommendation of the Bill of Rights Committee. If it has already been considered by the Judiciary Committee, as it has been by the Committee on Bill of Rights, I will withdraw my amendment.

The Chairman — The amendment is withdrawn.

Mr. Austin — There is an amendment of a substantive nature to this section which I would like to offer and urge very earnestly,

and I am perfectly willing to allow the argument offered by Mr. Marshall to be the argument for inserting this provision in this section. He said — and I think we have all conceded — that every litigant in any court is entitled to one appeal upon the facts. Now, I wish to call to the attention of the committee a number of cases — not many, it is true, but some — where there is now no provision for a review upon the facts by any court. Those are cases where the proceeding originates in the Appellate Division itself. Now, it is needless for me to remind lawyers here that there are a number of such cases. I will just instance as I go along, without saying that this amendment would apply to those cases. The writ of prohibition when directed to a judge or a court originates in the Appellate Division. The writ of mandamus in certain cases originates in the Appellate Division. The Constitution provides in Section 18 of Article III, in the matter of the establishment of street railroads, that where the consent of a certain percentage of the property owners adjacent to the street is not obtained, a proceeding may be originated in the Appellate Division. The Appellate Division, through commissioners appointed by it, if it so desires, may determine the facts in the case, and, in a particular instance, its determination of the facts may take the place of the consent of the property owners. There is still another and a very important line of proceedings that originate in and are determined solely by the Appellate Division. Those are disbarment proceedings. Now, we give to any criminal, no matter how small his crime, the right of at least one review upon the facts. In the Goodman case, 199 N. Y., Judge Werner, in a case which reviewed a disbarment proceeding, used these words, or practically these words. I think these are from the head note: "The power of review ends in this court where it appears that the proceeding has been instituted and conducted in accordance with the statutes and rules authorizing it if there is some evidence upon which to sustain the findings". In other words, the determination of the Appellate Division as to the facts is absolute, and there is no review in the Court of Appeals of those facts, and there is no review of any kind.

Now there is still another class of proceedings which are initiated in the Appellate Division, and, while the institution of those proceedings would undoubtedly be extremely rare, at the time they are instituted they would be of most tremendous importance. Those are the proceedings under Section 10 of Article VIII of the Constitution, with relation to the debt limit of the city of New York. You will remember that there are certain items which are excluded from the total debt of the city of New York in

order to determine the amount of the debt limit. The way you determine the amount of indebtedness which should be excluded from the total debt in determining the debt limit is through a proceeding authorized by legislation to be conducted by the Appellate Division. Certainly, in the matter of such tremendous importance as that it seems to me there should be a review in the Court of Appeals upon the facts — just one review upon the facts. For those reasons, because I do not wish to take up the time of the Convention in discussing this matter at great length — it seems to me that the mere statement of the fact that there are cases where there is no review upon the facts under this proposed amendment, or even under the Constitution as it now exists, I believe, is sufficient justification for this amendment which I offer.

The Secretary — By Mr. Austin. Page 17, line 10, after the word "thereon" insert the following: "or where judgment is rendered in a proceeding initiate in the appellate division."

Mr. Wickersham — Mr. Chairman, the suggestion is a very specious one. It ought not to be adopted, in my opinion. The three instances referred to by the delegate who introduced it were, first, those cases where the Appellate Division is empowered to give a substitute for the consent of the property owners for the construction of railroads in streets. The question of fact involved there is one of which the Appellate Division is the sole and exclusive proper judge. It is not the exercise of the power to hear and decide controversies in the ordinary sense of the term; it is the exercise of the question whether, in the interests of the community, a railroad should be constructed although the majority of all the property owners on either side of the street do not consent — peculiarly a question within the competency of the Appellate Division alone, as to which the Court of Appeals can have no qualifications to pass properly upon it. The second suggestion is that the Court of Appeals shall review the questions of facts involved in determinations under the Constitution with respect to whether or not securities should be issued by a city, even though in excess of the debt limit. That is a question of the exercise of an extraordinary power conferred upon that tribunal alone, to be exercised by it with a due sense of the public interests of that community in which it is constituted, and with which the Court of Appeals can have no proper concern.

The third, and perhaps the most important suggestion is that the Court of Appeals shall be given jurisdiction to review the facts in connection with disbarment proceedings. Mr. Chairman, this suggestion made its appearance in the Committee on the Judiciary and was summarily dismissed. The Appellate Division, in the

exercise of the jurisdiction immemorially exercised by it, investigates the conduct of attorneys and counselor-at-law charged with professional conduct of such character as to unfit them to be counselors of the court. No greater work has been performed by any tribunal in this State than that work which has been carried on by the Appellate Division in the first department during the last few years, which has made offenders of all grades at the bar tremble and beware. The jurisdiction is usually invoked by the Association of the Bar of the City of New York, of which I have the honor to be President. The grievance committee of that association has been a terror to evil doers at the bar. It has investigated with consummate, patient care — and I can say so because I am not a member of the committee,— complaints made against members of the bar, of manifold kinds, giving full opportunity to any member of the bar against whom a charge has been made to appear and explain a complaint against him; and, only the facts seemed to warrant it going further, does it lay the charge before the Appellate Division. The Appellate Division examines the case and if it considers that the facts warrant proceeding further, it refers it to one of the official referees. Before the official referee, the whole case is tried out fully, the accused is heard with his witnesses and a full and complete report of the facts and recommendations is returned to the Appellate Division. Then, after a full hearing on that report,— then, and then only, does the Appellate Division act. Now the jurisdiction of the Court of Appeals with respect to such cases is clearly stated by the court in the matter of the disbarment of Joseph A. Flannery, reported in 212 N. Y. I will read the first paragraph because it states the condition of the law: "The Appellate Division has found the appellant guilty of gross unprofessional conduct and has decreed his disbarment. On this record our power of review is limited to the consideration of the single question of whether the finding of guilt has any evidence to sustain it. It is not for us, where the evidence is conflicting, to determine where lies the truth. It is not for us, where opposing inferences may be drawn, to determine which we shall accept and which reject. It is not for us to revise the measure of punishment which guilt, when adjudged, is to entail. In establishing the standard of conduct to which the bar at its peril must conform, the Appellate Division has a wide discretion, with which we have neither the wish nor the power to interfere. If the conduct condemned is not wholly blameless, the extent to which it shall be reprobated is not for our determination. We have no right to say, where any measure of blame attached to the offense, that the standard has been set too high."

Mr. Chairman, the adoption of any such amendment as Delegate Austin suggests here would open the door to the breaking down of that work which the Appellate Division in the first department has so well performed, and is so thoroughly, carefully and conscientiously now performing, by substituting a review of the facts in the Court of Appeals in every case where some recreant member of the bar has been brought to book for his offenses. I know, Mr. Chairman, that there are quite a number of the gentlemen of the bar under consideration by the Grievance Committee of the Association of the Bar or by the Appellate Division who would heartily welcome this amendment. I believe there is not a single member of the profession in the city of New York familiar with the course of conduct in the disposition of these cases who would think that we had done anything but break down one of the standards surrounding the profession, if it should be adopted.

Mr. Clearwater — Speaking for the State Bar Association, of which I happen to be the president, I sincerely trust that this amendment will not prevail. This is not perhaps the time or place for, nor does the occasion seem to warrant, a detailed account of the pressure sought to be exercised upon the State Bar Association and the officials responsible for its conduct to try to induce the Judiciary Committee of this Convention to permit a review by the Court of Appeals of these cases of disbarment in the various Appellate Divisions of the State. In the judgment of that association, sir, and in my own judgment after an experience of forty-four years at the bar, I think of no more mischievous or demoralizing provision in the Constitution than to permit a review of the decision of the Appellate Division of the cases of disbarment of attorneys-at-law. They are admitted, sir, by the Appellate Division, admitted to practice law by the Appellate Division which speaks for the Supreme Court, the great court of original jurisdiction of the commonwealth and that tribunal has the final word, and its decision should be final upon the right of attorneys to practice and upon what constitutes a misconduct, in cancelling their right to practice law.

Mr. Stimson — Now I only wish to add a word to express my full concurrence in what Judge Clearwater and Mr. Wickersham have said. I feel that the passage of any such amendment would go further than any other step that could be taken to destroy the work that has been done to maintain the character and standing of the bar in my county.

Mr. Austin — Mr. Chairman, there is no man in this Convention who desires to maintain the standard of attorneys any more than I do. I don't know, I don't take it for a single moment that

when General Wickersham said he knew there were certain attorneys, or were attorneys that would welcome the passage of this amendment, I haven't the slightest idea that he referred to me individually.

Mr. Wickersham — I did not.

Mr. Austin — That does not worry me a particle. There is not a man in this room who appreciates more than I do what the Appellate Division of the city of New York has done in the way of purifying the profession and there is not a man in this room who applauds it any more than I do.

But speaking to the disbarment proposition, alone, and not referring to the other provisions which would be affected by this amendment at all, I still maintain that practically everybody who has spoken on the judiciary article has said that every man was entitled to one review on the facts. Is it any more serious to convict an ordinary man, a denizen of the lower world of the city of New York of a crime, than it is to convict a lawyer of malpractice or malfeasance in office? To me the latter is far more serious, and if either one of the two is entitled to review and not the other, it is the lawyer, whose profession and good name is taken away from him, and if the facts in any case justify the removal from membership at the bar of the man convicted of malpractice in office by the Appellate Division, does anybody fear that the Court of Appeals will not sustain that which is, in its very nature, a conviction? Now, that is all there is to this proposition from my point of view. It appeals to me as a perfectly fair thing. I hope sincerely that never during my professional career will I have to be under charges before the Appellate Division, but if I come to that point I sincerely hope that I may have, before my profession, before my good name, before my means of making a livelihood be taken away from me, I hope I may have the right of one appeal upon the facts.

Mr. Clearwater — For the lay members of this Convention, who may not be familiar with the proceedings which precede the disbarment of a member of the bar of the Supreme Court, let me say these proceedings are initiated and can only be initiated by sworn charges, specific in their character, sustained by documentary evidence, if that be obtainable, which is presented to the judges of the Appellate Division, sitting in banc, not to an individual judge. The Appellate Division thereafter appoints a referee to take testimony and report to it. On the hearing before that referee the lawyer against whom the charges are made is afforded the most ample opportunity to be heard in his own behalf and to summon such witnesses as he can and the entire assistance of the bar is given him to clear himself, not only of

charges but of imputations of unprofessional conduct, and after this full and careful hearing the referee formulates his findings and he transmits that with his judgment, with the evidence taken and the evidence if any there be documentary, to the Appellate Division, and the report and the findings and the testimony and the evidence are carefully examined by every member of the Appellate Division. Thus it is, sir, that a lawyer against whom charges are laid has the benefit of the double review upon the facts suggested by Mr. Austin. The referee, always a man of the highest standing at the bar, of great professional experience, selected because of his conscientious character and his high regard for the rights of his fellow practitioners, is very careful, sir, how he recommends the disbarment of a brother member of his profession, and after he has passed upon the facts with the utmost care — and I cannot too greatly emphasize the conscientious care with which referees pass upon these questions — then the matter comes, as I have said before the judges of the Appellate Division, each one of whom has in mind the importance of the character of the lawyer, has in mind the fact that to disbar him will blight his life, has in mind the fact that to disbar him will put a stain upon his personal character and professional escutcheon which never can be erased, and it is only after a majority of that court, very frequently not until after the entire bench have unanimously decided that his conduct is such that he is unfit to be an officer of the court and to practice at its bar, that the final judgment of the Appellate Division is given. Now, sir, it would be unseemly in the highest degree, in my opinion, and in the opinion of the State Bar Association, to go further with that case, with that decision of the Court of Original Jurisdiction which admitted that man to the bar. Mind you, sir, he is admitted to that practice, not by the Court of Appeals, the Court of Appeals simply provides rules for his admission, but the Appellate Division, which admits him to practice prescribes the rules of his professional conduct. If he violates the rules laid down by it, and invites the penalty prescribed, he should submit, sir, to its judgment, and is not entitled either as a matter of right or as a matter of courtesy to any review in any superior tribunal.

The Chairman — The question occurs on the amendment offered by Mr. Marshall.

The Secretary — Line 7, page 18, after the word "order" insert "of an Appellate Division of the Supreme Court".

The Chairman — The question occurs on the adoption of the amendment. Those in favor will signify by saying Aye, opposed No. The amendment is adopted. Next is the amendment offered by Mr. Austin.

The Secretary — Page 17, line 10, after the word "thereon", insert the following: "or where judgment is rendered in a proceeding initiated in the Appellate Division".

Mr. Wickersham — Mr. Chairman, I ask for a rising vote on that.

The Chairman — The question occurs on the motion by Mr. Austin. Those in favor will rise. Those opposed will rise. That amendment is lost.

Mr. Marshall — Mr. Chairman, I now move the adoption of the section as amended.

Mr. Wiggins — Mr. Chairman, before putting that motion, I would like to offer the following amendment. I might add before the amendment is read, and I should have said it before I handed it up that I offered the amendment at the request of Mr. Rosch, who has been ill and compelled to leave during the first of the afternoon.

The Secretary — Page 17, line 8, after the word "appeals", strike out the words "except where the judgment is of death, or where the appellate division on reversing or modifying a judgment makes new findings of fact and renders judgment thereon". Lines 10 and 11, strike out the words "be limited to" and insert the word "include", and after the word "law" on line 11, insert the words "and fact".

Mr. Wickersham — That, of course, would change the whole theory on which this article has been formed.

The President — The question is upon the adoption of the amendment. Those in favor signify by saying Aye, contrary No. The amendment is lost. The question now occurs upon the adoption of Section 11. Those in favor of its adoption signify it by saying Aye, opposed No. The section is adopted. The question now occurs upon the adoption of Section 12.

Mr. Wickersham — Mr. Chairman, there is no change, and I move its adoption, and that it be considered as read.

The Secretary — Section 12. The judges of the Court of Appeals and the justices of the Supreme Court shall not hold any other office or public trust. All votes for any of them, for any other than a judicial office, given by the Legislature shall be void.

The Chairman — Those in favor of the adoption of Section 12 signify by saying Aye, opposed No. The Section is adopted.

Mr. Wickersham — In Section 13, there is no change, except the omission of the comma, and I move its adoption.

The Secretary — Section 13. Judges of the Court of Appeals and justices of the Supreme Court may be removed by concurrent resolution of both houses of the Legislature, if two-thirds of all the members elected to each house concur therein. All other judicial

officers, except justices of the peace and judges or justices of inferior courts not of record, may be removed by the Senate, on the recommendation of the Governor, if two-thirds of all the members elected to the Senate concur therein. But no officer shall be removed by virtue of this section except for cause, which shall be entered on the journals, nor unless he shall have been served with a statement of the cause alleged, and shall have had an opportunity to be heard. On the question of removal, the yeas and nays shall be entered on the journal.

The Chairman — If there are no amendments, the question occurs upon the adoption of Section 13. Those in favor of it signify by saying Aye, those opposed, No. The section is adopted.

The Clerk will read Section 14.

The Secretary — Section 14. No person shall hold the office of judge or justice of any court or surrogate longer than until and including the last day of December next after he shall be seventy years of age. Each justice of the supreme court shall receive from the State the sum of ten thousand dollars per year. Those assigned to the appellate divisions in the third and fourth departments shall each receive in addition the sum of two thousand dollars, and the presiding justices thereof the sum of two thousand five hundred dollars per year. The justices now in office or hereafter elected in the first and second judicial departments shall continue to receive from their respective cities, counties or districts, as now provided by law, such additional compensation as will make their aggregate compensation what they are now receiving. Those justices elected in any judicial department other than the first or second, and assigned to the appellate divisions of the first or second departments shall, while so assigned, receive from those departments, respectively, as now provided by law, such additional sum as is paid to the justices of those departments. A justice elected in the third or fourth department assigned by the appellate division or designated by the Governor to hold a trial or special term in a judicial district other than that in which he is elected shall receive in addition twenty dollars per day for expenses while actually so engaged in holding such term, which shall be paid by the state and charged upon the judicial district where the service is rendered. The compensation herein provided shall be in lieu of and shall exclude all other compensation and allowance to said justices for expenses of every kind and nature whatsoever. The provisions of this section shall apply to the judges and justices now in office and to those hereafter elected. Except in the case of the consolidation of the offices of county judge and surrogate, the compensation of a judge or justice of any court of record in the state shall be neither increased nor decreased during the term of office for which he was elected or appointed.

Mr. Deyo — Mr. Chairman, I offer the following amendment.

The Secretary — By Mr. Deyo. Amend by striking out the brackets in line 13 and the word "twenty" in line 14.

Mr. Wickersham — On what page?

Mr. Deyo — Page 20. Mr. Chairman, the committee has reported an increase of expenses allowed to a judge in the third or fourth department who is called to a county outside of his district to try a case,— an increase of those expenses from ten to twenty dollars a day. I don't think there is any occasion for that.

Mr. Wickersham — That is a change which has been made by the Legislature. While it is a question which has been raised as to the constitutionality of the act of the Legislature, the committee in considering it thought that it represented the difference between the cost of twenty odd years ago and that provision was put into the Constitution as representing the cost at the present time.

Mr. Deyo — Mr. Chairman, if the Legislature has done that sort of thing there is no reason why this Convention should follow suit. Why, if a judge in my district is called to hold court over in Schoharie county there is no earthly reason why he should have a graft to the extent of twenty dollars for expenses. Not the slightest; and there is no reason why a judge from any one county, who goes over the line in any judicial district, should be given that amount for expenses.

Mr. C. H. Young — That is the cost down in New York.

Mr. Deyo — That is a different proposition, and even there I do not believe that is called for. If a judge is called to the first or second department, he gets additional compensation, which is provided for. If a judge in my district goes over into Onondaga county, or Schoharie, or into Sullivan county, he gets that much extra compensation for expenses under the provisions of this bill.

Mr. C. H. Young — Mr. Chairman, will the gentleman please state where he gets the additional compensation when he goes to New York, outside of this provision of the Constitution, or the act of the Legislature.

Mr. Deyo — Mr. Chairman, that is not the sole question. It permits the judge, any judge of the third or fourth department, who is called upon to hold court in any other judicial district than his own, to have that additional compensation. Ten dollars a day is enough for expenses, when I go to New York, and I don't believe the judges should be allowed that sort of judicial graft. It is not right. It is not fair.

Mr. F. Martin — Mr. Chairman, I would like to know from the member of the Judiciary Committee who is to speak in support of this section, or from the chairman of that Committee if it is a fact that the judges assigned to the Appellate Divisions of

the third and fourth departments are to receive in addition to their salaries the sum of $2,000 to be paid by the State while the judges in the first department receive only $10,000 from the State and no additional sum? That has troubled me and it may be that some member of the Judiciary Committee will be able to explain it. I find that it is not new matter, still I would like an explanation of it, if any member can give me an explanation of it.

Mr. C. H. Young — That was procured by an amendment made to the Constitution some two or three years since, and not by any Legislature in the meanwhile, and it was voted for by the people of the State at that time.

Mr. F. Martin — Mr. Young, I would like to know why we should adopt a clause in the Constitution which will arrange for the city of New York paying in part the additional compensation to be paid to an Appellate Division judge in the fourth and third departments.

Mr. C. H. Young — Mr. Chairman, in reply to the gentleman, I would say that as the people have voted for it, this section of the Constitution, as we have utilized most of the Constitution of 1894 as adopted by the people, there seems to be nothing strange to me that we should have adopted this section, having found it in the Constitution at this time.

Mr. Wickersham — Was not this provision adopted by the people as late as 1909?

Mr. C. H. Young — It was.

Mr. Buxbaum — Mr. Chairman, I offer the following amendment: Strike out on line 12, page 20, after the words "special term" the words "in a judicial district other than that in which he is elected" and insert in place thereof "in the first or second department".

The Chairman — The gentleman will send his amendment to the desk.

Mr. Buxbaum — I understand that amendment is satisfactory to General Wickersham.

Mr. Sears — I hope that amendment will not prevail, because it prevents us getting in the eighth judicial district judges from down the State, if they are not compensated sufficiently, when they get ten dollars a day, particularly as they have to give up for a corresponding period the compensation which is locally paid in the first and second department. I therefore hope the amendment will not prevail as it will work against our getting judges from the first and second departments as has been occasionally necessary in the eighth judicial district.

Mr. Wickersham — Mr. Chairman, I offer the following amendment.

The Secretary — By Mr. Wickersham. Page 20, line 22, after the word "surrogate" insert the words "or to make the compensation of the judges of the court of appeals equal to that of the justice of the supreme court".

Mr. Wickersham — Mr. Chairman, the clause in which it is proposed to insert that is the clause which reads, "except in the case of the consolidation of the offices of county judge and surrogate," and then comes in the words just read, and then follows "of a judge or justice of any court of record in the State shall be neither increased nor decreased during the term of office for which he was elected or appointed." The present provision of the Constitution, as the Committee is aware, prevents the decrease of compensation of a judge while he is in office. Salaries of the judges of the Court of Appeals are fixed by the Legislature; and there was very urgently pressed upon the attention of the Committee on the Judiciary a proposition that the salaries of the judges of the Court of Appeals should be fixed at a sum at least equal to that paid to any other judicial officer. We did not deem it expedient to report that provision, and yet since the article was reported, in response to a great deal of assistance and suggestion that the judges of the highest court of the State should receive compensation at least equal to that paid to any other judicial officer, we have considered it expedient to suggest as an amendment that the Legislature shall not be prevented from, if it pleased, so increasing these salaries, and we do not recommend the increase, but we simply remove the provision which now would prevent the Legislature if it saw fit from increasing the salaries of these judges of the court, accordingly.

Mr. F. Martin — Mr. Chairman, I offer the following amendment.

The Secretary — By Mr. F. Martin. Page 19, line 22, strike out the words "those assigned to the" and all of lines 23, 24, 25, and the words on line 26 "per year."

Mr. F. Martin — Mr. Chairman, the reason I ask that this amendment be adopted is that I can find no explanation and no reason why the city of New York and the first and second departments should pay the entire salaries of the judges, that is, the amount given by the State, and an additional amount from the city and still pay an additional sum to the judges of the Appellate Division of the third and fourth departments. It has been called to my attention, and after inquiry finding that no one can give any valid reason why the city of New York should in addition to paying the judges of the Appellate Divisions of the first and second department, pay the additional salary for the judges of the third and fourth departments. I have offered the amendment.

If there is any valid reason that can be given for it, why, I will not insist upon my amendment, but until I can hear some valid reason why that should be done, I must insist on this amendment.

Mr. D. Nicoll — Mr. Chairman, the reason, the valid reason for it, is that it passed two Legislatures, went before the people in 1909, was voted for by a majority of the persons voting and since that time has been a part of the Constitution. It doesn't seem that we ought to take things out of the Constitution which have been put in there deliberately, and so recently, only six years ago. That is the reason why, Mr. Martin.

Mr. F. Martin — Is that a reason, Mr. Nicoll?

Mr. D. Nicoll — It was recently submitted and adopted. It seems to me we ought to pay some respect to the recent activities of the people.

Mr. Marshall — Mr. Chairman, I would offer the following amendment. It is merely for the purpose of correcting a mistake in the printing.

The Secretary — By Mr. Marshall. From line 18, page 19, strike out the word "or" and substitute a comma.

Mr. Marshall — As the sentence now reads "no person shall hold the office of judge or justice of any court." It should read "No person shall hold the office of judge, justice of any court or surrogate."

Mr. C. H. Young — Mr. Chairman, I hope the amendment of Mr. Deyo will not prevail. The amendment as proposed to this section provides for the payment of $20 a day for a judge while he is sitting in the city of New York. There is a prevailing impression, I find around me, that there is some additional compensation coming to these judges who go and sit in New York. That is only true of those judges who sit in the Appellate Division. It is not true of those judges who go and sit for thirty days. Not only is there no additional compensation for them beyond this ten dollars, but they cannot secure their traveling expenses to go to and from New York, and it strikes me that this compensation of ten dollars a day is inadequate under those circumstances. It is true that those judges who come down on an assignment to the appellate division receive additional compensation. Mr. Martin seems to have an impression that in some way the city of New York and the Bronx are being robbed because the rest of the State pays to the judges in those departments twelve thousand five hundred dollars a year, and the rest of the State pays to the city of New York ten thousand dollars a year for the judges, and the city of New York pays seven thousand five hundred dollars in addition to that, and why he should grieve at the city of New York in this matter, when this additional compensation is paid by the State and

not by the city of New York is beyond my understanding except because of the contribution of the city of New York.

The Chairman — The question occurs upon the amendment offered by Mr. Deyo.

Mr. Deyo — Mr. Chairman, I ask for a division on that. I will say that if this related merely to the first and second departments and if those in the first and second districts were agreeable to the payment of the additional amount it would be a different proposition; but it does not relate to and it is not confined to that. It is a twenty dollar a day expense item allowed to a man who simply goes over a county line to hold court.

The Chairman — The gentleman calls for a rising vote. Those in favor of the amendment will rise. The gentlemen will be seated. Those opposed will rise. The amendment is lost. The question now occurs upon the amendment offered by Mr. Buxbaum.

The Secretary — By Mr. Buxbaum: Strike out on line 12 and line 13, page 20, the words " in a judicial district other than that in which he is elected " and insert in lieu thereof the words " in the first or second department ".

The Chairman — The question occurs upon the amendment. Those in favor signify by saying Aye, those opposed No. The Chair is in doubt. Those in favor say Aye, those opposed No.

Mr. Buxbaum — Mr. Chairman, I call for a division.

The Chairman — Those in favor will please rise.

Mr. C. H. Young — Mr. Chairman, I think the introducer of the amendment had better explain it. That is the quickest way of understanding it.

Mr. Buxbaum — Mr. Chairman, the justices from the upper part of the State, when they come to the first or second department, shall receive this additional compensation because the cost of living in the greater city is greater than up the State in the districts in which they have been elected. There was objection by Mr. Deyo to giving some of the New York city men when they come up State additional compensation. Therefore, I limited the increased compensation to the justices of the upper parts of the State who come to serve in the city of New York, the first and second departments.

Mr. Kirby — Do I understand the purpose of your amendment is that when our justices leave their judicial districts and go to the city of New York they are to be allowed one hundred and forty dollars a week to live on?

Mr. Buxbaum — While living in the greater city? Yes. We have had complaint from some of the justices that they can not

afford to serve in the city of New York because the expenses are so high.

Mr. F. Martin — They get ten dollars a day now when they go to the city of New York for expenses.

Mr. Buxbaum — That is in the Constitution now.

Mr. F. Martin — And they cannot live on that?

Mr. Buxbaum — They cannot. The increased cost of living is too high.

The Chairman — Those in favor of Mr. Buxbaum's amendment will please rise. Those opposed will please rise. The amendment is defeated. The question now occurs on the amendment offered by Mr. Wickersham. The Secretary will read the amendment.

The Secretary — Page 20, line 22, after the word " surrogate " insert the words " or make the compensation of the judges of the Court of Appeals equal to that of any of the justices of the Supreme Court."

Mr. Quigg — I hope this Convention will have the manliness to give the Court of Appeals judges the salary the Convention thinks they ought to have or else the manliness to vote down this proposition. To say to the Legislature that it can do it, or may do it, it seems to me is a distinctly — well, I hate to use the word, but it seems to me a cowardly thing to do. I think we should assume our own responsibility and vote for or against the proposition to give the judges of the Court of Appeals seventeen thousand five hundred dollars a year.

The Chairman — The question occurs upon the amendment just read. Those in favor signify by saying Aye. Those opposed, No. The amendment is carried. The question occurs next on the amendment offered by Mr. Martin. The clerk will read the amendment.

The Secretary — Strike out on line 22, page 19, the words " those assigned to the " and all of lines 23, 24, 25, and the words on line 26 " per year."

The Chairman — The question occurs upon the amendment just read. Those in favor signify by saying Aye, opposed, No. The amendment is lost. The question now occurs upon the amendment offered by Mr. Marshall. The clerk will read.

The Secretary — By Mr. Marshall. From line 18, page 19, strike out the word " or " and substitute a comma.

The Chairman — The question is upon the adoption of the amendment offered by Mr. Marshall. Those in favor signify by saying Aye. Those opposed, No. The amendment is adopted. The question now occurs upon the adoption of section 14.

Mr. Martin — Just a minute, Mr. Chairman. If this section

should be adopted, then thereafter those judges who come and serve in New York city would receive twenty dollars a day and their expenses.

Mr. Marshall — No, for expenses.

The Chairman — In lieu of expenses.

Mr. C. H. Young — All told, for expenses and so forth.

The Chairman — The question occurs upon the adoption of section 14. Those in favor say Aye. Those opposed, say No. The section is adopted.

Mr. Wickersham — I move that the committee rise, report progress and ask leave to sit again. I do that, because there is some business to be brought before the Convention for a moment.

The Chairman — The question occurs upon the motion made by Mr. Wickersham. All those in favor signify by saying Aye. Those opposed No. The motion is carried and the committee will rise. (The President resumes the chair.)

The President — The Convention will come to order.

Mr. Wagner — The Committee of the Whole has under consideration Special Order No. 61, begs leave to report that it has made progress, and asks leave to sit again.

The President — The question is upon granting leave to sit again. All those in favor say Aye, contrary No. The leave is granted.

Mr. O'Brian — Mr. President, the Committee on Rules offers the following report.

The Secretary — The Committee on Rules recommends the adoption of the following special rule: Resolved, That the following matters be made Special Orders in the order named, following the consideration of the present calendar of Special Orders; namely: General Order 50. Cities; Home Rule. General Order 52. Cities; Serial Bonds, etc. General Order 38. Public Utilities. General Order 62. Special Appropriations. And that upon the following matters speeches of individual members be limited to ten minutes each unless otherwise ordered in individual cases by vote of the Committee, and general debate be limited as follows: General Order 49. Charities. One hour. General Order 27. Literacy Test. Two hours. General Order 47. Canals. One hour. General Order 50. Cities; Home Rule. Two hours. General Order 52. Cities; Serial Bonds, etc. One hour. General Order 38. Public Utilities. One hour. General Order 62. Special Appropriations. One hour.

Mr. Wiggins — Mr. President, I move to amend the report with respect to the length of time given to the debate on the subject of home rule for cities, limited to two hours, to lengthen it to three hours. It seems to me that this bill which is coming

before the Committee in its modified and changed form, if it took as long as last time to discuss and find out what it meant, it will at least take three hours this time to discover what the purport may be, and it is such a big subject we ought to have time to thoroughly discuss it.

Mr. O'Brian — If the gentleman had been present last Friday and Saturday he would have seen that the matter was fully discussed. We devoted all day Friday to it, a session on Saturday and two sessions on Monday, so that as far as the existing measures are concerned, it was very thoroughly discussed, some fifty amendments were made. I do not think the present measure tends to such radical changes as would require an extended debate —

Mr. Wiggins — I had the benefit of the debate on Friday.

Mr. O'Brian — This matter was discussed in the Committee on Rules, this very phase of it, and it was thought that two hours ought to dispose of the matter one way or the other, and I therefore feel, on the part of the Rules Committee, that it is not at liberty to accept any amendment.

The President — The question is on the Proposed Amendment of Mr. Wiggins.

Mr. Lindsay — Mr. President, proposal No. 741, introductory 697, General Order No. 17, relating to the salaries and compensation of the Legislature, which was recommitted to the Committee of the Whole, I understand it had been made a Special Order. I move that that be added to the list of Special Orders reported by the Rules Committee.

Mr. O'Brian — Mr. President, if the House thinks it necessary to do that, the House will do it; but the Committee on Rules considered all of the matters before them, including the matter Delegate Lindsay has referred to. The Committee is endeavoring to make an orderly program for the progress of business and it has put on the special calendar, as you will see on reading it, some of the very important measures which should be disposed of, and I take it the middle of next week another calendar will be made up. While I am sure no member of that Committee wishes to dictate to this House what the order of business will be, yet the function of the Rules Committee is to use its best judgment and endeavor to guide the work in an orderly way, and inasmuch as both of the matters which have been suggested have been considered by the Committee, I respectfully suggest that neither of the amendments be adopted, but that the Committee's report be accepted.

Mr. Wiggins — Will Mr. O'Brian kindly answer an inquiry? Why is it, Mr. O'Brian, that it was considered essential to defer consideration of that amendment to which Mr. Lindsay referred and which has already passed the Committee of the Whole once?

Mr. O'Brian — Well, Mr. President, this program was made up with half a dozen members of the Rules Committee discussing the matter. I cannot answer that question, because I am unable to recall the particular reason which each member gave for his action. This is the best judgment of the Committee on Rules. If the House thinks it has not used good judgment, of course the House will change this report.

The President — The question is on the change in the number of hours for the debate on the report of the Committee on Cities by Mr. Wiggins. All in favor will say Aye, contrary No. The amendment is lost. The question is on the motion of Mr. Lindsay, to have the proposed amendment relating to the legislative salaries placed on special orders. All in favor will say Aye, contrary No. The amendment is carried.

Mr. Wickersham — Mr. President, the rule as amended has not been adopted.

The President — The question is on the adoption of the report of the Committee as amended. Those in favor will say Aye, contrary No. The report is agreed to.

Mr. Berri — Mr. President, out of order the Committee on Printing requests unanimous approval of the following resolution, and asks for its adoption.

The President — Is there any objection to considering the report of the Committee on Printing? The Chair hears none. The report is before the Convention.

The Secretary — The Committee on Printing approves and recommends the adoption of the following resolution offered by Mr. Buxbaum: Resolved, That there be printed for the use of the Convention one thousand copies of the address of the President in the Committee of the Whole, August 19th.

The President — The question is on agreeing to the report of the Committee on Printing. All in favor of the report will say Aye, contrary No. The report is agreed to.

The President — The hour of half past five having arrived, the Convention stands in recess until eight-thirty this evening. Thereupon, at 6:03 P. M., the Convention took a recess until 8:30 P. M., the same day.

AFTER RECESS — 8:30 P. M.

The President — The Convention will come to order.

Mr. Rodenbeck — Mr. President, I submit a report of the Committee on Revision and Engrossment, and I wish to say in connection with one of the proposed amendments that the amendment made in the Committee of the Whole restores the section as it now

exists in the Constitution. The proposed amendment was referred to the Committee for Engrossment so we have not undertaken to eliminate that section, but it appears now in the proposed amendment, in the exact form in which it appears in the present Constitution.

The President — The question is on the adoption of the report of the Committee. Those in favor will say Aye, those opposed, No. It is agreed to.

Mr. Shipman — Mr. President, on account of important business I asked to be excused from attending the session of the Convention from to-night's session until Tuesday night.

The President — The question is on granting the excuse asked for by Mr. Shipman. Those in favor say Aye, those opposed, No. The leave is granted.

Mr. Marshall — Mr. President, by unanimous consent, I ask leave to offer the following, and I move that the Committee on Revision and Engrossment be discharged from further consideration of 789, introductory 708, and that it be amended as follows: Strike from page 2, line 15, the word "approval" and in place thereof insert "veto within thirty days;" also the word "Lake", should begin with a capital letter wherever it occurs. I ask that the Committee be directed to report the same as amended, that is with the consent of the Committee. It merely changes the word "approval" to "veto within thirty days" time, thirty days in which the Governor shall act with respect to any proposal as to fish and game laws.

The President — Will Mr. Marshall indicate what the amendment is? Conservation?

Mr. Marshall — Conservation.

The President — Is there objection?

Mr. Austin — May I ask what the nature of the Proposed Amendment to the conservation article is?

Mr. Marshall — It is merely to make it more definite.

Mr. Austin — Which section is it?

Mr. Marshall — The first section, as to fish and game regulations. It says: "subject to the approval of the governor" and it is now to be subject to the veto of the Governor within thirty days. Saranac Lake and Long Lake should be written with capital letters because they are the names of villages. That is all. It is merely formal changes.

The President — Is there objection to the motion being received out of order? The Chair hears none. All in favor of the motion will say Aye, contrary, No. The motion is agreed to.

Mr. J. L. O'Brian — Mr. President, I shall be obliged to appear in argument before the Supreme Court in Buffalo to-morrow

morning and I therefore ask to be excused from the session of to-morrow.

The President — Those in favor of granting the excuse will say Aye, contrary, No. The excuse is granted. The Convention will go into Committee of the Whole for further consideration of the Special Order of the day, the Judiciary Article, Mr. Wagner will resume the Chair.

(Mr. Wagner resumes the Chair.)

The Chairman — The Secretary will read Section 15.

The Secretary — Section 15. The assembly shall have the power of impeachment, by a vote of a majority of all the members elected. The court for the trial of impeachment shall be composed of the president of the Senate, the senators, or the major part of them, and the judges of the court of appeals, or the major part of them. On the trial of an impeachment against the governor or lieutenant-governor, neither the lieutenant-governor nor the president of the senate shall act as a member of the court. The court for the trial of impeachments may order all or any part of the testimony to be taken and reported by a committee composed of members of the court, except that the impeached officer must be allowed to testify before the court if he so desires. No judicial officer shall exercise his office, after articles of impeachment against him shall have been preferred to the senate, until he shall have been acquitted. Before the trial of an impeachment the members of the court shall take an oath or affirmation truly and impartially to try the impeachment according to the evidence, and no person shall be convicted without the concurrence of two-thirds of the members present. Judgment in cases of impeachment shall not extend further than to removal from office, or removal from office and disqualification to hold and enjoy any office of honor, trust or profit under this state; but the party impeached shall be liable to indictment and punishment according to law.

Mr. Wickersham — Mr. Chairman, I move to amend line 7, inserting before the word "president" the word "temporary," which has in some way been dropped out. Mr. Chairman, the amendment suggested in this section does two things; it provides that, on the trial of an impeachment against the Governor or Lieutenant-Governor, the official who would succeed the impeached officer shall not take part in his trial. In the next place it provides that the court for the trial of impeachments may order all or any part of the testimony to be taken and reported by a committee composed of members of the court, except that the impeached officer must be allowed to testify before the court, if he so desires. The purpose of this amendment is to relieve trials by impeachment of the cumbersome and unwieldy character which it

has been claimed by many made them impossible remedies for the removal of corrupt officials. There seems to be no reason why a large amount of the testimony in impeachment cases should not be taken by a committee, all printed, and reported to the several members of the court. But if the accused desires to be heard, of course, he shall have the right to testify before the full court. These are the only two changes, and the Committee, after very careful consideration, unanimously recommends their adoption.

Mr. Lincoln — I send an amendment to the desk.

The Chairman — The Clerk will read the amendment.

The Secretary — By Mr. Lincoln. In section 15, on page 21, strike out the sentence beginning with the words "The Court" in line 8 and ending with the words "so desire," in line 12.

Mr. Lincoln — I am unable to agree with the distinguished chairman of the Committee on the Judiciary and with the learned lawyers of that committee who have favored this amendment. I appreciate that the section is to be supported by the committee, notwithstanding it may not have received the approval of every member of the committee. Under the circumstances, and in view of the attendance here to-night I feel that it may perhaps be a waste of time to discuss it, but I feel so sincerely that that amendment is a mistake, that I wish to take the time of this committee for a very few minutes to point out what I believe are the reprehensible features of the proposal.

It seems that this violates all principles of Anglo-Saxon jurisprudence. We have had established for centuries the principle that an accused person is entitled to have the witnesses confront him and confront the tribunal in which he is to be tried. It is proposed in this case, in the case of prosecutions for one of the highest crimes known to the law, to take that particular safeguard away from the accused. We furnish to the humblest criminal, to the most degraded criminal, this very safeguard which we propose to take away from the trial of an official who may have been elected by ten million people to the highest office in the commonwealth. I think it violates, as I say, all principles of jurisprudence. It seems to me that we have placed about our minor criminals, if you permit me to allude to them as such, various safeguards; for instance, we do not permit a deposition to be taken upon behalf of the prosecution against a criminal, no matter if the witness whose testimony it is proposed to receive is in Australia or is near unto death or for various reasons is unable to attend the trial. There we insist that if any witnesses are to be produced upon behalf of the prosecution, they must be produced in the court, where the court and jury may inspect them, may see their demeanor upon the stand; and yet, we propose that our

highest elected official shall be deprived of that privilege or safeguard. Then, again, if a juror in trial of a criminal action is taken ill or is unable to pursue the case, and it is necessary to replace him with another juror, it is necessary to reproduce the witnesses and have them appear before the juror who has been substituted — in fact, to begin the trial over again. We don't permit, in other words, the testimony taken before the eleven who continue in the case to be reported to the twelfth. It seems to me we might as well provide in the case of our jury trials, that the jury might order or allow any part of the testimony to be taken and reported by a committee composed of the jury except that the indicted defendant must be allowed to testify before the jury if he so desire. I see no distinction whatsoever. Now, I have examined the precedents in these cases, and I find absolutely not a single precedent in all the jurisprudence of the English or the American people for any such practices as we propose. It has always been regarded as the peculiar necessity on account of the dignity and solemnity of the trial of the public official, that he be tried before the highest court and not before some committee or some subordinate part of the tribunal.

Mr. D. Nicoll — I want to say, Mr. Lincoln, that it was the intention and the purpose of the Committee that the impeached officer should have the right belonging to all defendants of being present when the testimony was taken and of cross-examining the witnesses.

Mr. Lincoln — I appreciate that, Mr. Nicoll. It is very obvious upon the face of the section.

Mr. D. Nicoll — What?

Mr. Lincoln — That he is to have permission to be present and cross-examine the witnesses.

Mr. D. Nicoll — You think it is obvious?

Mr. Lincoln — Why, yes.

Mr. D. Nicoll — In the language we have adopted?

Mr. Lincoln — Yes.

Mr. D. Nicoll — Then what do you object to?

Mr. Lincoln — To the fact that the section as proposed permits the witnesses to be examined who are not seen by the whole tribunal which is to pass upon the indictment or impeachment, and are not present before them.

Mr. Quigg — Does that differ from a commission?

Mr. Lincoln — I say it differs from all our ideas and ideals of criminal jurisprudence. This is in essence a criminal trial of the highest character, and if we are going to throw these safeguards about our common, mean, low criminals, we must certainly afford our impeached officer a similar safeguard.

Mr. Stimson — I was going to ask the gentleman whether he would apply the same strictness of the procedure to having every member of the Senate which tries the impeachment present during every moment of the trial.

Mr. Lincoln — It seems to me to be somewhat out of the question to have as great strictness as is suggested by Mr. Stimson, but in theory the entire court is there and always has been there and always should be there, so long as we have these impeachment trials.

Mr. Quigg — Isn't there a distinction to be drawn between a criminal trial and the impeachment of an officer? Isn't it the same distinction that is to be drawn between a criminal trial and a disbarment of an attorney for unsuitable conduct?

Mr. Lincoln — I cannot put them in the same category at all, Mr. Quigg. The practice in impeachment trials has always been included among the forms of procedure provided by the Code of Criminal Procedure, and it is looked upon as one of the crimes recognized by the Criminal Code. As I say, there is no precedent for this. I appreciate that I am speaking in the presence of a former member of the United States Senate, and members of the most recent and perhaps famous of our courts of impeachment, and men who sat in that court and men who were counsel upon one side or the other, but however they may differ with me on this proposition, it would be very difficult to convince me, Mr. Chairman, that it is at all in accord with our ideas of jurisprudence to permit a committee to take the testimony and report back to the court in a criminal case. Now, the Chairman of the Judiciary Committee did not refer to the reasons for which this proposal is advocated, but I can see no reason whatever except to expedite the trial.

Mr. Wickersham — I tried to explain the reason.

Mr. Lincoln — Let me ask, is there any reason, except to expedite the trial?

Mr. Wickersham — It is to make it a possible and practicable method of trial instead of a cumbersome, tedious proceeding, which satisfies the public that it is a wholly impracticable way of dealing with a corrupt official and, therefore, convinces the public that the only way to get rid of such a one is by recall by popular vote.

Mr. Lincoln — Mr. Chairman, may I ask just one question more of the Chairman? Are you familiar with the number of days which were actually consumed in these various trials, with which we are most familiar, in the actual taking of testimony?

Mr. Wickersham — I don't know which trials you are referring to. I am familiar with a number of them.

Mr. Lincoln — The Sulzer trial. Are you familiar with the number of days that was given up to the taking of testimony in that trial?

Mr. Wickersham — I don't think I know the number of days, but it was something like five weeks.

Mr. Lincoln — It was six whole days and three half days occupied either in whole or in part in the taking of testimony. Arguments, of course there were arguments, and these arguments would go on if we have testimony taken by the committee and reported to the courts.

Mr. Stanchfield — Mr. Marshall was the counsel there. Perhaps he can tell you.

Mr Lincoln — I appreciate it.

Mr. Clearwater — Mr. Chairman, I understand the gentleman to say that there was no precedent for this. Permit me to remind him that there is. In the impeachment trial of Andrew Johnson, President of the United States, in which testimony was taken in three different States. I am not discussing the general principle, but merely correcting the gentleman's statement as to the historical precedent.

Mr. Lincoln — I am willing to accept the correction but I think depositions have never been taken by a committee and we are lowering this to the level of a legislative investigating committee. Take the Sulzer trial: Six whole days and three half days out of some weeks in the trial of the Sulzer case were devoted to taking the testimony. Now only those six whole days and three half days could have been saved by the amendment proposed.

Mr. Wickersham — The gentleman would not generalize from one trial alone? Why not take a more recent case? Take the Archbold case in Washington. Testimony was taken there for a number of weeks.

Mr. Lincoln — Are you familiar, Mr. Wickersham, with the number of days in which testimony was taken in that case?

Mr. Wickersham — It was some weeks, I cannot tell you the exact number of days.

Mr. Lincoln — I can give you the exact number of days.

Mr. Wickersham — Possibly the President of this Convention, who was present, and who was a member of that court could give us the information.

Mr. Lincoln — I have the record here which I can refer either to the committee or our President.

Mr. Root — I do not remember the precise number of days but I know there was very serious interference, in which business was stopped during a long period, and in which the entire Senate

of the United States was obliged to sit and listen to a great mass of testimony about which there was really no dispute whatever.

Mr. Lincoln — Mr. Chairman, the record shows there were forty-one days occupied in the trial of the Archbold case from 1:30 o'clock until some later hour in the afternoon, and, of that time, seventeen days were occupied in the taking of testimony. Now, I suspect that the reason why the Senator and the other distinguished gentlemen are somewhat in favor of the present practice is that the Archbold case was not a case which we might call of widespread public interest and importance, and it must have been tedious in that particular case to spend the time which was spent, which as I say, was exactly seventeen days in that case, spent in the taking of evidence. In the case of Andrew Johnson, there were just twelve days spent in taking evidence. That means that there were twelve days which would have been saved had a provision like this been in force in the Federal practice. In the Hooker case, which is not an impeachment case, six days out of the five weeks occupied by the trial of the Hooker case, six days of testimony. It seems to me that the solemnity and the dignity and the importance of the high court of impeachment warrant that small proportion of the court's time in taking of testimony in open court before the entire tribunal. We will lose that dignity and that solemnity if we refer the taking of testimony to some subordinate committee. It is well worth it in my opinion. There have been in this State four impeachment trials, that of Mr. Mather, a canal commissioner in 1853, that of Mr. Dorn, another canal commissioner in 1868, Judge Barnard in 1872, and the trial of Mr. Sulzer in 1913. Now out of that — a gentleman interrupts me to suggest the Cardozo case. I believe the gentleman is mistaken and the Cardozo case was not an impeachment trial. So that in 138 years of the history of this State there have been just four impeachment trials and I have taken the trouble to look up the time occupied in the taking of testimony, and it is just thirty-three days. Now, if we cannot afford thirty-three days of the time of the high court of impeachment in this State in 138 years to take that testimony, it seems to me it is very unfortunate. The real trouble with these cases in this State has been, and I say this with all deference to the counsel on both sides in the recent Sulzer case, the real trouble has been not the time occupied in taking testimony, but the time in arguing questions of jurisdiction. That is where the time has gone, Mr. President, and it is perfectly proper under our Constitution, it has never been settled and is not settled to-day. Counsel will say that it was settled in the Sulzer case, but on the next trial that is held, the same question will come up. Now I maintain, instead of making a provision

here whereby the court will take testimony of witnesses by committee, and thus lowering the dignity of the court, we might much more preferably take the trouble and fifteen minutes' time of this Convention to define what is and what is not an impeachable offense. There lies the trouble in these cases, and so, Mr. Chairman, while I move the amendment which I have sent to the desk, I propose at an appropriate time to move to define the jurisdiction of the court of impeachment, so that when the next trial comes, if we must have another, counsel, Senators, and judges of the Court of Appeals, need not be spending days and days and weeks and weeks in questions of jurisdiction.

Mr. Root — Mr. Chairman, I think Mr. Lincoln takes too rigid a view. An impeachment is not a criminal proceeding. The express provision of our Constitution, the common provision of Constitutions, is that judgment shall not extend beyond removal from office to which disqualification from future holding of office may be added and the party impeached may still be indictable and punished, according to law. These very precise and rigid rules of protection of defendants in criminal cases, are out of tenderness of the law, for liberty and life, which are not called in question at all in impeachment cases. An impeachment is purely a matter between the people and their political agent, and the great obstacle to the successful use of impeachment as a means of enabling the people to deal with their unfaithful servants arises from the fact that an impeachment stops the wheels of government. The injury to the conduct of the affairs of government is so great that it does not pay to impeach unless there is a very, very serious case and a scandal which leads the public to demand that there shall be action. And there ought to have been more than four impeachments in this State, and a great many more. We would have had a better government and a more contented people if this remedy had been more practical and available so that more unfaithful officers should have been called to account. The inadequacy of the remedy has been such that over a large part of our country people have been demanding — what? Not that public officials should have their office secured by the right of trial before a court and impartial tribunal, with the right to be confronted with the witnesses, with the right to specific charges, with the right to require that the charges be affirmatively proven, with the right of judicial judgment upon the proof, but that they should be liable to be recalled by a popular vote cast upon the information obtained from the columns of the newspapers. I say it is the inadequacy of the remedy of impeachment which has led to the wide-spread demand for recall and those of us who believe that that would be a great misfortune

are bound to make the legal remedy, in which is opportunity for the public official to require proof, be confronted with the witnesses and to have opportunity to cross-examine and give his evidence and have judicial judgment — make that so adequate that we will hear no more of this demand for recall. I have sat for weeks in the trial of an impeachment case, feeling that the injury to the interests of the people of the country through the stoppage of the wheels of government in order to listen to a large mass of testimony that I knew would not be disputed, made it hardly worth while to get rid of the unfaithful official.

This provision is one which will permit every really important witness to be heard before the court. Of course, if a showing is made, if a suggestion is made, that a particular witness is a critical one, that counsel want court to see him and hear him when he testifies, then order the testimony to be taken before him. But the great body of testimony is not of that character. Of course, counsel for the defense requires the other side to prove their entire case, whether they have any idea of controversy over the proof or not, and it is that great mass of routine, customary, but obligatory testimony which ought to be taken by a commission composed of members of the court and reporting, so that the great mass, the great body of the chief legislative assembly of the State and of the judges of the Court of Appeals shall not be obliged to waste their time while it is being taken. It seems to me that this is a practical, sensible piece of government business, for us to make this method of dealing with unfaithful officials more available and useful. I hope the amendment will prevail.

Mr. Lincoln — Inasmuch as you seem so seriously to advocate this provision, would you indicate to me whether or not it is your understanding that testimony taken in this manner is to be read again in the court, or is intended to be read privately by the members of the court?

Mr. Root — It is reported to the court.

Mr. Lincoln — What is your understanding as to the way in which it is to come to the attention of the members of the court?

Mr. Root — That is for the court to decide. It is to be reported to the court, and, of course, it will be brought to the attention of the members of the court.

Mr. Lincoln — In that connection, I want to call the attention of the Convention to the fact that, if the evidence taken before such a committee is to be reported to the court and read again in the court, obviously there is no saving in time; and the saving in time is the only reason why this amendment is advocated. There can be no appreciable saving in time if the evidence is to

be brought back into court and read again. Now, if, instead of that, the evidence is to be printed and submitted to the members of the court, you have this contingency: Either those members will not read it, or, if they will read it, they will have individually consumed at least as much time, which presumably can be devoted to the public business, as they will have consumed in hearing the testimony in open court. You have those two alternatives; you have either the evidence brought back and read in court, or you have the members expected to, and not one chance that they really would read the testimony in privacy. And, another thing, if testimony is expected to be read by the members of the court, singly, separately, no counsel who is arguing his case before that court will dare trust to the fact that the members have read the testimony, and each counsel will occupy substantially the same amount of time in carefully reviewing that testimony that would have been occupied had that testimony been presented in court.

Mr. Root — In his experience,—

Mr. Lincoln — Of which I have had none, of course.

Mr. Root — I did not mean in impeachment trials but in the argument of cases, in which he has had a great deal of experience. How large a part of the testimony that comes up before an Appellate Court do counsel on argument refer to?

Mr. Lincoln — That is surely an entirely different proposition.

Mr. Root — Not at all. I will undertake to say that in all the impeachment cases that there have been in a hundred years in this State and in the United States, not five per cent of the testimony that has been taken has ever been referred to in argument. That is the universal rule in all our appeals.

Mr. Lincoln — That is precisely my point, Mr. Chairman, that it is not necessary to refer to testimony taken in open court; but testimony which counsel must rely upon as having been read by more or less industrious members of the court in private must be very diligently referred to in the summing up and in the conduct of the trial in the court.

Mr. Root — But the reason why not five per cent is referred to is that the rest is on matters that are not disputed.

Mr. Lincoln — While I am on that subject, may I ask just one more question?

Mr. Root — Certainly.

Mr. Lincoln — Do you think the Assembly would be any more likely to impeach a public official because of the fact that the Senate has this additional privilege of taking testimony by committee?

Mr. Root — I do. I think it would make a very great difference.

Mr. Blauvelt — I want to ask Mr. Root a question, whether this language would permit the Court of Impeachment, in ordering the testimony to be taken by a committee, to order the committee to report its findings and its conclusions?

Mr. Root — No, I think not.

Mr. Blauvelt — There would be great danger if such a construction could be placed upon the language, because the Court of Impeachment undoubtedly might like to be relieved of the responsibility of determining the facts, and would accept the findings of the committee as the conclusions of the court. Now, I speak somewhat from experience. I, too, sat through many long days of an impeachment trial. I also took part as a member of a committee to which was referred the trial of removal proceedings against a judge of the Supreme Court, and in another proceeding to test the right of a seated member to sit in the Senate of this State. In the two latter proceedings there was a strong effort made in submitting the matter to the Judiciary Committee, in each case to require the Committee to report its findings and conclusions on the testimony taken, and it was only with a great deal of effort that such a course was prevented. I think there is great danger in that respect, Mr. Root, in this matter. I think the Court of Impeachment, the highest court in this State, making its own law, its own rules of procedure, its judgment not being reviewable, should sit and take the testimony and determine the fact.

While I am on my feet, if you will permit me a moment longer, Mr. Stanchfield,— We have in this State, both in the Constitution and in our statute law, methods of removing all of our elected State officials and our appointed State officials except the governor and lieutenant-governor.

The Constitution provides for the removal of judges of the Court of Appeals and judges of the Supreme Court by concurrent resolution of both houses of the Legislature for cause and after an opportunity to be heard. The inquiry into the charges may be and usually is made by a joint committee of the two Houses. State officers, whether elected or appointed, except the Governor and Lieutenant-Governor, may be removed by the Senate upon the recommendation of the Governor. The trial of such an officer may be referred to a committee appointed by the Senate. A speedy and easy method is thus provided for the removal of judges and of all State officers except the Governor and Lieutenant-Governor. The Governor and Lieutenant-Governor can only be removed from office by impeachment proceedings, which, in my opinion, should be made more difficult rather than more easy. It

would seem to me that we should not lessen the dignity and solemnity attendant upon a trial by the judges of the Court of Appeals and the Senators sitting as a Court of Impeachment. A trial held by a Committee of that Court would, in my opinion, tend to destroy tradition and might invite proceedings for the removal of the chief executive of the State more frequently in the future and has been our experience in the past.

Mr. Stanchfield — Mr. Chairman, whether or no an impeachment be a criminal proceeding is, perhaps, an arguable question. Whichever it be it is not germane to this discussion. I had to appear as counsel in both the Hooker case and the Sulzer case and some others, and in each of these two proceedings the one to remove Judge Hooker and the one to impeach Governor Sulzer, a practical question arose as to how to obtain the testimony of witnesses who were ill and unable to attend the trial, and in each of those proceedings we were confronted with the proposition that there was no authority for taking the testimony outside of the trial and reading it when the court of impeachment was in session. Now, in a broad way, the object of this amendment, as I see it, and as I understand it, is to provide for the taking of testimony by commission, and from my point of view it is not arguable but what that testimony when it is brought into the court of impeachment would be read, question and answer, in the presence of the accused, so that when the accused, if he so elect, or desired under the language of the amendment, to take the stand in his own behalf and tell his story, and enter either a denial or explanation of the testimony taken by the commission, the court of impeachment would have an intelligent understanding of the entire evidence. Now, that is all that this amendment means. It is simply to give the right to take the testimony of witnesses by commission, witnesses whose evidence cannot otherwise be obtained.

Mr. Blauvelt — Doesn't it permit the taking of all the proof that way?

Mr. Stanchfield — Yes, that is put in there simply as a safeguard because the testimony may be so limited in quality and quantity, and the witnesses may be in such a situation that it would be necessary to take the whole of it in that form, and if that were true it would still be read and the right of the accused preserved to deny or explain it, as he saw fit, and it was put in in that way, as I say, to cover all these emergencies.

Mr. Lincoln — Then in your view this is not for the purpose of expediting the trial?

Mr. Stanchfield — Until you brought it up I never heard that this amendment was introduced for the purpose of expediting the trial.

Mr. Lincoln — In your view it is only to expedite the taking of depositions substantially in the same manner and under the same circumstances or necessities as in private litigation.

Mr. Stanchfield — My view is that it is to render accessible and available to the Court of Impeachment all of the testimony which otherwise never could be had, just as you have that right in every other sort of litigation.

Mr. Lincoln — Would you advocate that where the witness was available and could be brought into open court?

Mr. Stanchfield — No, I should insist upon the witness being brought into open court if he was available.

The Chairman — The question occurs upon the amendment offered by Mr. Wickersham. An amendment to insert the word "temporary" before the word "president," line 7, page 21. Those in favor of the amendment signify by saying Aye, opposed, No. The amendment is adopted. The question now occurs upon the amendment offered by Mr. Lincoln.

Mr. Lincoln — Mr. Chairman, may I ask for a rising vote?

The Chairman — The clerk will read the amendment.

The Secretary — By Mr. Lincoln. In section 15, on page 21, strike out the sentence beginning with the word "the court," line 8, and ending with the words "so desire," in line 12.

The Chairman —Those in favor of the amendment will rise. Those opposed will rise. The motion is lost. The question occurs upon the adoption of section 15. Those in favor signify by saying Aye, those opposed, No. The section is adopted. Section 16. The secretary will read.

The Secretary — The existing county courts are continued, and the judges thereof now in office shall hold their offices until the expiration of their respective terms except that the county courts in the counties of Kings, Queens, Richmond and Bronx, shall be abolished and the county judges transferred as provided in this article. The number of county judges in any county may be increased, from time to time, by the Legislature, to such number that the total number of county judges in any one county shall not exceed one for every two hundred thousand or major fraction thereof, of the population of such county. The additional county judges whose offices may be created by the Legislature shall be chosen at the general election held in the first odd-numbered year after the creation of such office. All county judges, including successors to existing judges, shall be chosen by the electors of the counties for the term of six years from and including the first day of January following their election. Except as in this article otherwise provided county courts shall have the powers and jurisdiction now prescribed by the Legislature, and also original jurisdiction

in actions for recovery of money only, where all the defendants reside in the county, and in which the complaint demands judgment for a sum not exceeding three thousand dollars. The Legislature may hereafter enlarge or restrict the jurisdiction of the county courts, provided, however, that their jurisdiction shall not be so extended as to authorize an action therein for the recovery of money only, in which (1) the sum demanded exceeds three thousand dollars, or (2) in which any person not a resident of the county is a defendant, except in cases where the defendants have an office for the transaction of business within the county and the cause of action arose therein. Every county judge shall perform such duties as may be required by law and shall receive such compensation as may be fixed by the board of supervisors of the county or other officials exercising powers similar to those now vested in such boards, which shall be payable out of the county treasury. A county judge of any county may hold county courts in any other county when requested by the judge of such other county.

Mr. C. H. Young — This section as amended provides for those judges who become a part of the combined courts in New York, and abolishes the county judges in those counties, Kings, Queens, Richmond and Bronx. This amendment provides for the increase of the jurisdiction in the other county courts in the State to three thousand dollars instead of two as it has been for the last twenty-one years. This amendment provides in lines 15, 16 and 17, page 23, for the payment, for the fixing of compensation by the boards of supervisors in the counties. That amendment was put in by your committee because of the fact that there might be a combination under another section of this Constitution of the surrogates courts with the county courts and it was thought by your committee that if that were done the local authorities might well provide for the compensation to be paid under the combination of the county courts and surrogates' courts, for the compensation to be paid for the combination of the county judge and surrogate. The amendments suggested here have been endorsed by the various county judges and many members of the bar in the State of New York. The other amendment, to which I have not called your attention, provides for additional jurisdiction in the county court, other than that which it has had, for the past twenty-one years. That is, in lines 4, 5, and 6, page 23, "Except in cases where the defendants have an office for the transaction of business within the county and the cause of action arose therein." It must be obvious to the Convention that this is adding to the jurisdiction of the county courts a power that it has not hitherto had. That power and that addition was made partially at the suggestion of

the county judges and largely because of the recommendations offered, or the proposal offered by Mr. Lincoln, a delegate in this Convention.

Mr. Wood — Mr. Chairman, I offer the following amendment.

The Chairman — The Clerk will read the amendment offered by Mr. Wood.

The Secretary — By Mr. Wood. Page 23, strike out second bracket in line 14 leaving period at end of sentence. Page 23, strike out lines 15, 16 and 17. Page 23, strike out bracket so as to read " Every county judge shall perform such duties as may be required by law. His salary shall be established by law, payable out of the county treasury."

Mr. Wickersham — Mr. Chairman, that is satisfactory.

Mr. L. M. Martin — Mr. Chairman, in connection with Mr. Wood's amendment, I offer the following. It dovetails in with the idea Mr. Wood has expressed.

Mr. Wood — In explanation of this amendment, Mr. Chairman, I would say that it leaves the article just as it is at the present time and just as it has been since the adoption of the Judiciary Article of 1867. Under that article, which went into effect on the first day of January 1870, the salaries of the county judges were to be fixed and established by law; in other words, by the Legislature. The Legislature in 1870, by chapter 467, passed a law providing that the salaries of county judges, where they were surrogates, should be fixed by the board of supervisors. A test was made of that provision and it is reported in 5 Lansing, page 115, Healy vs. Dudley. The court held in that case that section 15 of the new Judiciary Article, Article VI of the Constitution, in providing that the salaries of county judges shall be established by law, confines the power of fixing such salaries to the Legislature, and it was held that the statute conferring the power on boards of supervisors to establish such salaries was unconstitutional and void. Subsequent to that time, and in 1872, by Chapter 767, the Legislature provided that the salaries of the county judges and surrogates of the several counties except that of the county of New York should be fixed, and they established under that act, salaries of the county judges, in all the counties of the State, as well as the salaries of surrogates, except in the county of New York. Under Section 3, the salaries of the county judges who performed the duties of the office of surrogate were fixed at various sums.

Mr. Wickersham — Mr. Wood, I accept your amendment as satisfactory.

Mr. Wood — If that is so, Mr. Chairman, I have no more to say about this.

The Chairman — The amendment offered by Mr. L. M. Martin will be read.

The Secretary — By Mr. L. M. Martin. Page 23, line 13, after the word "judge" insert "and special county judge in counties having the same."

Mr. Wickersham — Mr. Chairman, that seems entirely correct.

Mr. Martin — What is that?

Mr. Wickersham — That seems all right.

Mr. L. M. Martin — Yes, it clears the situation in our county. I call the attention of the committee to the fact that on the next page of this Article, lines 15, 16 and 17, provides that the surrogate will receive a salary which shall be established by law. That is, the Legislature shall fix the salaries of the surrogates; and by the amendment on page 23 provide that the boards of supervisors shall fix the salaries of county judges. Well, that amendment leaves them, as I understand it Mr. Young, so that they are both fixed by law.

Mr. C. H. Young — Naturally the same language now applying to the surrogates is used in the Proposed Amendment of Mr. Wood, as to county courts.

Mr. L. M. Martin — That is satisfactory.

Mr. Wickersham — Mr. Chairman, on page 23, line 4, I move to strike out the words "except in cases where the", and insert instead the words "unless such", so that it will read, instead of "except in cases where the defendants have an office", and so on, — it should be "unless such". Also strike out the "s" at the end of the word "defendants", the last word in line 4. It is simply better phraseology, improving the style.

Mr. Lincoln — Just a word on that very sentence. I originally introduced a proposal here having in view the extension of the jurisdiction of the county court to domestic and foreign corporations in counties other than those of their organization, but in counties where they have a place for the transaction of business. Now, it seems that the committee has extended the proposal so as to include individual defendants, to which I have no objection, but in view of the context I wondered if it was perfectly clear that that does now include corporations.

Mr. Wickersham — Well, I think it would read, under my last suggested amendment, "unless such defendant have an office for the transaction of business within the county and the cause of action arose therein." The Code provides for actions against corporations.

Mr. Lincoln — Well, if I may call the chairman's attention to the ruling of some courts, that a foreign corporation may not be sued in the county court, and it was one of the things I sought to

accomplish here, to permit actions to be brought against foreign corporations in county courts in the counties where such corporations have a place for the transaction of business. Now, in connection with this language used here, it seems to me that the context makes it somewhat doubtful whether it would apply to a corporation. The language is, going back a line, " in which any person not a resident of the county is a defendant, except in cases where such defendant " etc. Now, it starts out with the word " person ".

Mr. Wickersham — The word " person " includes corporations. It was because of that general word that we did not deem it necessary to use a lot of language in specifying what has been so uniformly held to include a corporation.

Mr. Marshall — May I be permitted to interject here the fact that the statutory construction law defined a " person " as including a corporation?

Mr. Wickersham — It is uniform construction of all courts under the Constitution of the United States.

Mr. Lincoln — I understand that, Mr. Chairman, but I want to call it to the attention of the Committee, and I do not propose to offer an amendment, but I hope the Committee is perfectly well satisfied that corporations may be sued under this section.

Mr. Wickersham — I think there is no doubt about it.

Mr. Stowell — May I ask Judge Wickersham if he accepted the amendment offered by Mr. Wood?

Mr. Wickersham — Yes.

Mr. Stowell — I had intended to offer one precisely like it but if that has been accepted, I won't do so.

Mr. C. H. Young — Is it in order to move the adoption of the amendments?

The Chairman — Yes, if there is no further discussion.

Mr. Latson — May I ask the Chairman of the Committee whether there is a clerical error in line 4 of page 23? I will read the context. Beginning with the sentence at the foot of page 22, line 24, I will commence to read: " The legislature may hereafter enlarge or restrict the jurisdiction of the county courts, provided, however, that their jurisdiction shall not be so extended as to authorize an action therein for the recovery of money only, in which (1) the sum demanded exceeds three thousand dollars, or (2) in which any person not a resident of the county is a defendant, except in cases where the defendants "— does that mean all of the defendants?

Mr. Wickersham — I move to strike out the letter " s " making it read " the defendant ". That is the defendant referred to in the earlier part of the sentence.

Mr. Latson — May I ask one further question of the Chairman? What would be the construction of the language if there were more than one defendant, one of whom was a defendant and the other was not?

Mr. Wickersham — There would be no jurisdiction. The county court would have no jurisdiction over the action unless each defendant were either, first, a resident of the county; or, second, though not a resident of the county, one having an office for the transaction of business within the county.

Mr. C. H. Wood — Mr. Latson, for your information, if you will look at line 21 on page 22 you will find the answer to your question, " where all the defendants reside in the county ".

Mr. Latson — Mr. Chairman, if the chairman of the committee thinks there is no ambiguity there, I have nothing further to say.

Mr. Wickersham — We have gone over that very carefully.

The Chairman — The question is on the adoption of the amendment offered by Mr. Wood.

Mr. L. M. Martin — Do I understand that in the amendment special county judges are excepted?

Mr. C. H. Young — Yes.

The Chairman — Those in favor of the amendment will signify by saying Aye, opposed, No. The amendment is adopted. The next is the amendment offered by Mr. Martin. Those in favor of the amendment will signify by saying Aye, opposed, No. The amendment is adopted. The next is the amendment offered by General Wickersham.

Mr. E. N. Smith — May I ask to have the amendment read?

The Secretary — Page 23, line 4, strike out " except in cases where the " and insert in place thereof " unless such ". Same line, strike out the letter " s " in the word " defendants " at the end of the line.

The Chairman — The question is upon the adoption of the amendment. Those in favor will signify by saying Aye, opposed, No. The amendment is adopted. The question now occurs upon the adoption of Section 16. Those in favor of its adoption will signify by saying Aye, opposed, No. The section is adopted.

Mr. Tierney — I offer the following amendment to Section 17.

The Chairman — If there is no objection, we will proceed without reading through the entire section. There being no objection, it is so ordered.

(Section 17 follows: The existing surrogates' courts are continued, and the surrogates now in office shall hold their offices until the expiration of their terms. Their successors shall be chosen by the electors of their respective counties, and their terms of office shall be six years, except in the county of New York,

where they shall continue to be fourteen years. There shall be a surrogate in Richmond county to be chosen by the electors thereof at the general election in November, one thousand nine hundred and sixteen, whose term of office shall be six years from the first day of January, one thousand nine hundred and seventeen. His successors shall be chosen in like manner for a term of six years. Surrogates and surrogates' courts shall have the jurisdiction and powers now prescribed by the legislature until otherwise provided by law. The county judge shall be surrogate of his county, except where a separate surrogate has been or shall be elected. In counties having a population exceeding forty thousand, wherein there is no separate surrogate, the legislature may provide for the election of a separate officer to be surrogate, whose term of office shall be six years. When the surrogate shall be elected as a separate officer his salary shall be established by law, payable out of the county treasury. Vacancies occurring in the office of judge of the court of general session of the city of New York, judge of the city court of New York, county judge or surrogate shall be filled in the same manner as like vacancies occurring in the Supreme Court. For the relief of surrogates' courts the Legislature may confer upon the Supreme Court in any county having a population exceeding four hundred thousand, the powers and jurisdiction of surrogates. A surrogate of any county may hold a surrogate's court in any other county when requested by the surrogate of such other county. The Legislature may at any time consolidate the offices of county judge and surrogate in any county.)

The Chairman — The Clerk will read Mr. Tierney's amendment.

The Secretary — By Mr. Tierney. Amend Section 17, by substituting the following:

§ 17. The existing surrogates' courts are continued, and except as otherwise provided in this section, the surrogates now in office shall hold their offices until the expiration of their terms. Their successors, in counties in which the offices of county judge and surrogate shall be separate, shall be chosen as surrogates by the electors of their respective counties, and their terms of office shall be six years except in the county of New York, where they shall continue to be fourteen years. There shall be a surrogate in Richmond county, to be chosen by the electors thereof at the general election in November, whose term of office shall be six years from the first day of January, one thousand nine hundred and seventeen. His successors shall be chosen in like manner for a term of six years. The surrogates and surrogates' courts shall have the jurisdiction and the powers now prescribed by the Legislature until otherwise provided by law. The county judge shall

be surrogate of his county having a population of not exceeding one hundred thousand, and the title of his office shall be county judge and surrogate. In any such county now having a separate surrogate, his office is hereby abolished and all pending proceedings before him transferred for a hearing and determination to such county judge and surrogate. In counties of a population exceeding one hundred thousand, having a separate surrogate, such office is hereby constituted and continued. When the surrogate shall be elected as a separate officer his salary shall be established by law, payable out of the county treasury. Vacancies occurring in the office of judge of the Court of General Sessions of the city of New York, judge of the City Court of New York, county judge or surrogate shall be filled in the same manner as like vacancies occurring in the Supreme Court. For the relief of surrogates' courts the Legislature may confer upon the Supreme Court in any county having a population exceeding four hundred thousand, the powers and jurisdiction of surrogates. A surrogate of any county may hold a surrogate's court in any other county when requested by the surrogate of such other county.

Mr. Tierney — The amendment which I offer here is to be found substantially in Printed No. 587 of the amendments. The purpose of the amendment is to combine in the smaller counties of the State the offices of county judge and surrogate, and the amendment and its purpose are a corollary to another amendment which I will move when the section is reached, that county judges and surrogates shall be prohibited from practicing law. I think it will be more logical, and I trust that the leader will agree with me, if the two sections may be considered together and both discussed at the same time; because I am willing to concede that if the county judges and surrogates in the smaller counties of the State are prohibited from practicing law, there must be some provision in the Constitution, as a remedy to obviate the difficulty of attracting competent lawyers to act as judges in those courts. That is because I know that in the smaller counties the county judges and surrogates, where the offices are separate, do not each receive a sufficient salary. I believe that it is an evil and it is recognized by everybody here that no judge of any court of record should be permitted to practice law. In the Conventions of '67 and '94 this question was considered and the reason that there was not put into the Constitution of '94 a prohibition against the practicing of law by judges in the smaller counties was that of expediency, and because there was not a remedy suggested for the conditions which might arise. I trust that General Wickersham will consent to pass this section until we come to Section 24 of this article, so that the two may be considered together, because I am willing to concede that, if this Convention is not

willing to write into the Constitution a prohibition against the practice of law by judges and surrogates in the smaller counties of the State, we might just as well let the courts run along as they are. If General Wickersham will consider the two together, I would like to discuss that phase of the question.

Mr. Wickersham — Mr. Chairman, I think that Mr. Tierney might properly discuss them together but I think we will have to vote on them in their order. They might very well be discussed together, Mr. Tierney.

Mr. Tierney — Well, then, I will let it be understood, gentlemen, that I address myself first to the question, shall county judges and surrogates in counties of less than seventy-five thousand be allowed to practice law. Why should they? It is repellant to any man, whether he is a lawyer or a layman, that a judge should be permitted to act as a referee or be permitted to practice law. Suppose that I should propose here that the judges in New York city should be permitted to act as referees or practice law; why, it would be laughed out of this Convention. Is there any reason though, as a matter of principle, why a judge in a county of eighty thousand should be prohibited from practicing law, and a judge in a county of seventy thousand be permitted to practice? Absolutely none. I came here unsophisticated, of course, as to Constitutional Conventions, and with the idea that there would be written into this Constitution nothing but matters of principle, but when last week I heard this Convention solemnly discuss the route of a highway from Old Forge to Saranac Lake, as solemnly and with as much detail as a board of supervisors in any county, and within an hour and a half discover that it had left out eight miles of the particular road and by the proper parliamentary practice get back to it and put the eight miles in, I felt that perhaps I am justified in suggesting that expediency does enter into the considerations of these Conventions.

Mr. F. L. Young — Mr. Tierney, what most of us want to know is whether the present rule has been abused and whether any scandal has attached to the practice of law by any county judges or surrogates in the counties affected. I think, Mr. Chairman, that is the thing the Convention wants to know.

Mr. Tierney — Mr. Chairman, I know of a county judge in a county up the State, with a population of about forty-five thousand, who, soon after he was elected wrote letters to the attorneys in his county and the adjoining counties, suggesting that he had a very fine judicial mind, and that he would make an excellent referee in cases. Of course, the attorneys in his county and adjoining counties practicing before him might have forgotten that letter when they were suggesting the names of referees, but, believe me, some

of us were so human that we did not. I know of a county not far from mine, where the partner of the county judge suggests to people who may be engaged in litigation that the influence of his partner, being a county judge, with juries, is such that it might very properly be considered by litigants. Let me say to the gentleman from Westchester that since I have been in this Convention I was called home to try a case for another attorney, and I found this situation: I was asked to help in the defense of a man charged with grand larceny who came into the city of Plattsburgh a couple of years ago and promoted some kind of a company and inveigled some of our merchants to indorse his note for a few thousand dollars under circumstances which permitted the grand jury to indict him for larceny. When I went into court I found that the county judge sitting on the bench had been counsel for this man when he was promoting the company; and I found opposed to me, associated with the district attorney, the surrogate of my county, who represented the men who were inveigled into going on to this note. Of course the county judge, when we finally got around to it, suggested that, if we went to trial, he would have to get a county judge from another county. He had that much sense of the proprieties of the occasion. Within two days I went into the Surrogate's Court and found, opposed to me in a contested claim, the county judge of my county. Now, I am not here pleading for myself. I think I have practiced law long enough to have learned that judges are still mere men — as Judge Kellogg said to me one time, judges are human; I have learned that well enough. I am not pleading for myself. If I cannot take care of myself, I should not be permitted to practice. But, gentlemen, it does not make a very good impression on the layman. As I said to you a moment ago, it is repellant to the idea of justice that the judge of a court should be permitted to practice. Why should you or I to-day, in the heat of argument in a trial where we are apt to say something which may be offensive to the opposing counsel, to-morrow have to go before him and ask him, say, for a favor? If it is right that he should not practice law in a county of eighty thousand, it is absolutely right that he should not practice law if he lives in a county of seventy thousand. I thank the Judiciary Committee for having recognized the principle for which I contended when I introduced this amendment, in having reduced the population from 120,000 to 75,000, but let us forget that we are here arguing for expediency's sake. Let us write into this Constitution principles, and put right here in the section that we are going to consider soon, section 24, that a judge of a court of record shall not practice law. He hasn't any right to do it, whether he is in New York county or Clinton county, but, bowing to this idea that expediency must be

observed here, I am frank to tell you that we must not write it in unless we find a remedy for it. Now, the remedy is right here, that we combine these two offices in these smaller counties of the State.

Now, gentlemen, there are in this State 38 counties having a population of less than 75,000. In most of these counties, county judge and surrogate preside over both courts I am told by gentlemen coming from those counties that as a matter of custom he does not attempt to practice law. In 11 counties there are two offices, the surrogate and the county judge. Why should not we say, we here representing 62 counties, why should not we say to these 11 counties, combine these two offices. Of course it is too bad for the political machine in those counties, I don't know whether they are Democratic or Republican, to lose that one office, but why not combine them? Let us say, you get together and have one big, decent, court, a dignified court. Let the county judge be the surrogate of your county. I yield to the suggestion that there is a kind of a sentiment, that the surrogate is the adviser of the widow and the orphan and the destitute families of his county, so let us call him the county judge and the surrogate, but let us put them together and let us say to them, be a judge and be what most people think a judge ought to be, free from the entangling alliances of practicing law. Leave to the Legislature or to the board of supervisors, I don't care which, the power to fix the salary. Take my own county where we have a population I think of about forty-eight thousand. They have a county judge and a surrogate. We pay the county judge the trifling sum of $1,200 a year and he has an office, a clerk, a stenographer, light and heat and a library, and we pay the surrogate $1,800 and he has a clerk and a stenographer and an office and light and heat and a library. We can with very much greater dignity pay him $5,000 and attract the best practitioners in that county, those who want to go into that kind of life; and that situation is true. I have figures showing the population and showing the salaries paid in these counties where there are two different offices, and I believe the same situation obtains in other counties. I trust, gentlemen, you will give this serious consideration. I hope the situation will not happen that happened in the Convention of '94. I was very much interested to hear Judge Roche, I think it was, from Troy, who appeared before the committee and who said that the reason they fixed 120,000 as the population of the counties where judges should not practice or should practice law was because there were two men in the Convention of '94 who were ambitious to be candidates for some other office. Let me call to your attention that there is one man in this Convention who is honest. You will find

in the roll of bills here a proposition of Judge Ostrander, surrogate of Saratoga county, who is in sympathy with the proposition I advance. Gentlemen, before you turn down my proposition, think about it. Think if it adds any to the dignity of the courts up-state to have the county courts and surrogates engaged in the rough work of practicing law. Think if it adds anything to the dignity of those courts. Think if it adds anything to the respect in which those courts are held and I trust, gentlemen, you will consider my proposition. I have drafted it, accepting some recommendations of the Committee, the Judiciary Committee, relative to the surrogate of Richomnd county — I am not familiar with that situation — but I assume their judgment is correct, and I am willing to accept it, but what I am arguing here is the adoption of this amendment which will obviate the difficulty which would arise if we forbade judges in the small counties from practicing law and yet did not give them sufficient salary.

Mr. Lindsay — Mr. Chairman, I want to inquire of Mr. Tierney what is the limitation in his amendment?

Mr. Tierney — I don't understand you Mr. Lindsay — this particular amendment that would combine the offices in the counties of less than one hundred thousand, or rather I would have the surrogate's court and the county court presided over by one man, one officer, and would then prohibit all county judges and surrogates from practicing law.

Mr. Lindsay — I don't know the exact population of my county under the new census but I imagine it is slightly over a hundred thousand, the last census I believe was somewhat less. I think if it should apply to the county of Niagara and I take it that there are other counties somewhat similar, I think you will find trouble with the proposition in a very short time. In our county the judge, the county judge is the surrogate at the present time, but the business of the office is so great it will be absolutely necessary to separate the offices before long. Our county judge has criminal cases as large as, or larger than those before the Supreme Court in many counties. It has a civil calendar as large as or larger than the Supreme Court in many counties and with the surrogate practice that the judge now has he is finding — and he is a very active judge, too,— an embarrassing amount of work —

Mr. Tierney — Does the gentleman know that in Niagara county there are three terms of county court, one on the first Monday in March, one in May, one in September and one in December, and that none of those terms have lasted over a week in the last four years.

Mr. Lindsay — I beg to say to the gentleman that he is utterly mistaken. I have been at terms that lasted four weeks in the last

eighteen months. The County Court is in session as long practically as the Supreme Court in any of its terms. It has sent to it twenty or thirty important cases.

Mr. Tierney — Mr. Lindsay, how many of them are tried, actually tried out?

Mr. Lindsay — I have known as many as eight or ten to be tried at a single term, all important criminal cases.

Mr. Franchot — Merely in support of what he says, the last term of County Court in Niagara county lasted over six weeks.

Mr. Lindsay — It is my impression that it did. I will ask the gentleman from the same county and who attends the County Court, because of his business, more than I do, isn't it a fact, as I have stated, that the County Court hears almost as much as the Supreme Court, counting the criminal term?

Mr. Franchot — I should say that, including the criminal and civil work, there are almost as many cases tried at each term of the County Court as at a term of the Supreme Court.

Mr. Lindsay — So that I think that the limitation as to the surrogates or the county judge now practicing law — we don't have him practicing law in our county — but I think that limitation on population is too high for a combination on those two courts, I think 75,000 is much nearer correct.

Mr. Hale — I am very much surprised, Mr. Chairman, to hear for the first time in my life, after the report of the Judiciary Committee was made, that there was any occasion whatever for the Constitutional Convention to interfere with the Legislature and especially with home rule in counties in regard to whether a county should have one official to discharge the duties of judge and surrogate, or whether a county should have two officials. My own county is 89,000 in population, according to the census preceding this one, and I suppose there is very little change, and we have had for a great many years, as far back as my actual memory, a county judge and a surrogate as separate officials. Our surrogates go back to the time of Silas Wright, who was surrogate in St. Lawrence county before he was known outside of St. Lawrence county, and from that time to the present there has been a succession of surrogates who have given abundant satisfaction to the county. As a rule the surrogate of St. Lawrence county is elected term after term until he becomes so old that he ceases to be eligible by reason of the age limit — three and four, and five terms,— and we have had in my recollection, which is longer than I wish it were, only four men as surrogates. On the contrary we have had as county judges of that county, within my memory, and since I was a practicing lawyer, Charles O. Tappen, who was afterwards judge of the Supreme Court in

the Fourth Judicial District; Leslie W. Russell, who was elected Attorney-General of this State while he was county judge, and who was afterwards elected and served twelve years as justice of the Supreme Court; John M. Kellogg, of our county, county judge, afterwards presiding judge of the Court of Claims — at least a judge of the Court of Claims, and is now and has been for many years a Supreme Court justice and is now one of the justices of the Appellate Division of the Third Department; Theodore H. Swift, afterwards presiding judge of the Court of Claims; your servant, myself, who was — I was county judge in my county for six years and resigned the office to accept the position that I have since held here. I was succeeded by Clarence S. Ferris and he has been succeeded by John C. Crapser, and of all of those men not a single one would have considered the office for a moment if he had been disqualified from practicing law or if he had been obliged to take on the duties of surrogate.

Mr. Tierney — Judge Hale, what is the salary paid to the judge?

Mr. Hale — One thousand seven hundred and fifty dollars is paid to the surrogate $1,000 by the State and $750 by the county.

Mr. Tierney — How many terms of county court are held in St. Lawrence county, trial terms?

Mr. Hale — Three.

Mr. Tierney — How long do they last?

Mr. Hale — From one to two weeks. Now there you have the proposition. We can have in the person of Judge Crapser, in the person of Judge Ferris,— I will say nothing about myself — in the person of Judge Swift, in the person of Judge Kellogg, in the person of Judge Russell, in the person of Judge Tappen, for the work of the county court, the same calibre of men that the Supreme Court ordinarily contains, and three of them became Supreme Court judges.

Now why should we, by virtue of a mandate from the Constitutional Convention, why should we be obliged to surrender the service of these men? It does not take over two months, perhaps some years three months, for the county judge to perform the duties of the office, and do you want him to be idle nine months of the year? I never heard a suggestion of a complaint from any source either through impropriety or awkwardness that the other lawyers practicing before the juries in St. Lawrence county objected to meet as antagonists, the county judge or the surrogate. As a matter of fact the surrogate is not usually a practicing lawyer and with the exception of Judge Abbott, who was surrogate thirteen years and a member of the Constitutional Convention of 1894, they have not been trial lawyers, by taste or by

choice, but have been an entirely different kind of lawyer, men commonly and accurately called office lawyers. The two classes of men are entirely different and they are adapted to their duties. Now let us have some home rule in the counties, as well as in the cities. As long as we choose and prefer to employ this system why is not Mr. Tierney ready to rest on the authority of the Legislature, which can at any time consolidate the office of county judge and surrogate in any county. Now, let him appeal to the Legislature and have those two offices consolidated, where he thinks they should be, but let us alone.

Mr. Deyo — There has been some inquiry in my neighborhood with respect to one statement made by the delegate from St. Lawrence county; we all know how it is that the office holders of St. Lawrence county manage to pull off so many State jobs, and in the absence of Delegate Smith from New York, we would like to know how it happens that St. Lawrence county manages to have a portion of the salary of their surrogate paid by the State of New York.

Mr. Hale — I misspoke myself if I said any part of the salary is paid by the State. The State fixes the salary at $1,750 and the county makes an allowance of $750 for the surrogate for expenses away from his office, for he holds three terms every month in the other principal centers of the county; and for the purpose of paying his expenses away from home and his necessary outlay that is made by the board of supervisors. I suppose it would be entirely proper to have the salary increased to $2,500, out of which he would pay his own expenses, but as long as the county is satisfied and pays the bills, I don't think it is a matter of serious import to the Constitutional Convention. Now what would happen in St. Lawrence county and every other county, in Jefferson county, in which I understand the same conditions prevail, would be that we would be compelled to do something we don't want to do, something not in the interest of justice in our county, and something that ought not to be required in order to bring about a state of tolerable justice.

Mr. Marshall — I understand correctly, do I not, that you are addressing your remarks to the amendment of Mr. Tierney, and not to the proposal of the Committee?

Mr. Hale — I am addressing my remarks to the amendment.

Mr. Marshall — Of Mr. Tierney.

Mr. Hale — Later on I will have to address my remarks to the Committee. You have the same iniquity later in another section.

Mr. Marshall — The Committee leaves it to the Legislature to permit the consolidation of the two offices of county judge and

surrogate in counties having a population of more than forty thousand.

A Delegate — Seventy-five thousand.

A Delegate — In any county.

Mr. Marshall — In any county.

Mr. Hale — As I understand it, you have made it necessary in this section farther over, which Mr. Tierney refers to,— you have made it necessary that the county judge and the surrogate, whatever they get in the way of salary, as long as they are separate officers, they cannot practice law.

Mr. Wickersham — Counties having more than seventy-five thousand.

Mr. Sears — There is nothing in section 17 as proposed by the Committee that you object to?

Mr. Hale — No, nothing.

Mr. Sears — So far as section 17 is concerned?

Mr. Hale — No. I am helping the Committee to get its section through.

Mr. Steinbrink — Reference has been made to Richmond county, and with the approval of the Chairman of the Judiciary Committee, and with the approval of Mr. Eugene Lamb Richards, the delegate from Richmond county, I offer the following amendment, and I may say briefly, the change there made is taken care of in a later section which is yet to be considered.

The Chairman — The Clerk will read the amendment.

The Secretary — By Mr. Steinbrink: Page 24, strike out the italics in lines 1, 2, 3, 4, 5 and 6.

Mr. E. N. Smith — Mr. Chairman, I have no objection to the provision of the report of the committee in this regard. I, therefore, am in favor of the report of the Committee on this section, and am addressing my remarks in opposition to the position of Mr. Tierney. As I understand Mr. Tierney's amendment, it is this: That in counties having less than a population of 100,000, the offices of surrogate and county judge shall be combined.

Mr. D. Nicoll — Must be.

Mr. E. N. Smith — Must be combined. In our county, we have, since I have existed, had a surrogate and a county judge and the proposal to combine those two offices would certainly not meet with favor with our people.

Mr. Tierney — Would it meet with the approval of the gentlemen who now hold these two offices of county judge and surrogate?

Mr. E. N. Smith — I am not considering their interests in any respect. So far as they are concerned in our county, in the office of surrogate, since I have any memory, we have had only three surrogates, so satisfactory has been their work, and the people

have continued those men in office by re-election, as a matter of course. In the office of county judge we have had some splendid men. One of them is a justice of the Supreme Court now, and he was county judge, I think, for nearly twenty years.

Mr. Tierney — How many terms of trial terms of County Court do you have in Jefferson county?

Mr. E. N. Smith — You have the figures, and can tell me.

Mr. Tierney — Four. How long do they last?

Mr. E. N. Smith — They are quite busy. We also have had another justice of the Supreme Court by the name of Henry Purcell who was a county judge. The point I make is simply this: I have no objection to the Legislature having power to consolidate these offices, but I do not want it mandated in the Constitution, because the condition is perfectly satisfactory with our people just as it is. And I think I may say the same applies to Oswego county, also in my district.

Mr. Wiggins — I dislike very much indeed to disagree with Brother Tierney, because he and I are nearly always on the same side when we talk things over in the corridors.

Mr. Tierney — What county?

Mr. Wiggins — Orange. Look it up. But I think he has entirely misconstrued the reason for the present provision in the Constitution, and I am addressing myself to both these sections in accordance with his suggestion that we take them both up together. That is, this section now under consideration on page 23, and also the section on page 32 which refers to the population of a county in which a man is prohibited from practicing law when he occupies the position of either surrogate or county judge. Now, in examining this matter, I found that in 1846 there was the first provision placed in the Constitution with respect to any prohibition as to fees, compensation or service which a county judge might render. In that year, the Constitution provided that no county judge should receive any fees or perquisites for his own use. That continued until 1867, which Constitution, as you will all recall, was entirely rejected with the exception of the judiciary article, and in that year, 1867, they made a further step and provided that in the cities of New York, Brooklyn, and Buffalo no justice of the Supreme Court or a Court of Record in those cities should practice as an attorney in any Court of Record or act as referee. Now, that continued — that clause in the Constitution continued until the Commission of 1890, and the Commission of 1890, which was proposed for the purpose of drafting a proposed amendment to the Constitution, recommended that the provision be changed so as to provide that in counties having a population of a hundred thousand or more,

the county judge or surrogate or both should be prohibited from practicing law. Mr. Marshall participated in that Commission, and subsequently, in 1894, the matter was presented to the Constitutional Convention, and if Mr. Tierney will refer to the record of the Constitutional Convention he will find he is mistaken as to the reason for incorporating that provision in the Constitution. Of course, it might have been discussed in the corridors of the Convention Hall, as many things are being discussed in the corridors of the Convention Hall of this Convention, on the subject of expediency. But so far as the record is concerned, each shows not only was the question of expediency entirely eliminated from the discussion, but, on the contrary, there is nothing in the discussion to show there was any criticism at all of the courts by reason of the county judges having practiced. Mr. Marshall made a speech on the subject which I have before me, and he makes no criticism of the fact that the size of the counties ought to be changed because of the fact that any criticism has been directed at the judge or the manner in which justice had been dispensed with in the various courts,—

Mr. Wickersham — Dispensed with.

Mr. Wiggins — Not dispensed with. We have changed the record, and you and I are unanimous. Mr. Root also spoke on the subject and he said when Mr. Hirschberg from Orange county, where I come from, suggested that the size of the counties be increased from one hundred to one hundred and twenty, Mr. Root expressed himself as being entirely favorable to the change and could see no harm, or could see no reason why the suggestion of Judge Hirschberg should not be adopted. Now, so far as these counties are concerned, and the trial terms that are held in each, Mr. Tierney wanted to know if I knew — he hasn't asked me since I told him to look it up — between his information and that of the members of this Convention, in Orange there are four trial terms each year of the county court. Two are held in Newburgh and two in Goshen. The county judge resides in Newburgh, and when the trial term is held there he can finish sooner than when it is held in Goshen. Our trial term lasts about one week, and occasionally will run into ten days. It is very seldom — I don't think I can recall a term of a county court that has lasted over ten days; so that, assuming that our four terms during the year would last a period of ten days each, there is forty days the county judge is occupied in cases in the trial term.

Mr. D. Nicoll — Does that include your criminal cases?

Mr. Wiggins — That includes all the business. Our criminal business is not quite as large as that in Niagara county.

Mr. Tierney — What salary do you pay the county judge?

Mr. Wiggins — Three thousand dollars a year.

Mr. Tierney — For forty days?

Mr. Wiggins — For forty days. He has four other special terms of one day each; seldom, if ever, do they last over from ten o'clock in the morning until three o'clock in the afternoon. Our surrogate's court is held every week; that occupies Mondays and Tuesdays. We have a peculiar county in that there are two county seats, or rather two court houses and one county seat, and the surrogate holds court in Goshen on Monday, and in Newburgh on Tuesday. He goes to Newburgh in the morning, usually seven or eight o'clock, and comes back about twelve o'clock in the afternoon. He gets a salary of $3,500 a year. You can readily see that if you were to pass this later amendment, which is referred to on page 32, and in section 24, in which the size of the counties is reduced to a hundred thousand, where the prohibition applies against the practice of law by every surrogate of a county, that a very unusual condition will exist, and that is this, that a man will be serving his county for a period of forty-five days and will be wholly idle during the rest of the year. There has been no criticism directed against the county judges in the counties that I know anything about. Judge Stowell has been the county judge of his county; Mr. Phillips has been the county judge of his county; Judge Hale has been the county judge of his county; and Judge Clearwater for a number of years was county judge in Ulster county. No criticism was directed against those men because they practiced law during the time they were not holding court. Mr. Tierney, I think, has been unfortunate in having lived in a county where county judges were a little different, perhaps, from what they are in a vast majority of the counties of this State, and I see no harm which will come either to the administration of law, to the litigants or to the lawyers, by reason of the judge practicing law. It seems to me, Mr. Tierney's amendment ought to be defeated, and the amendment to Section 24, which changes the county from 120,000 to 75,000, when the prohibition attempts to apply to the practice of law by the county judge and surrogate, should also be defeated.

Mr. D. Nicoll — On your statement, it seems to me, that the county judge and surrogate could very properly be combined into one office in your county, if they wanted to do it.

Mr. Wiggins — There is no question but what that is all the county judge does.

Mr. D. Nicoll — I don't know anything about it. I just wanted to call that to your attention.

Mr. Wiggins — I heard you raise your voice, I saw tears in your eyes, and I heard a sob in your voice, when you spoke about

home rule, which I assume you would let us have and let us do that in Orange county which you would have us permit you to do in New York.

Mr. D. Nicoll — You do just as you please, I simply make the suggestion.

Mr. Wiggins — Just a word by way of explanation relative to the surrogates. Occasionally, it happens that the surrogate has references which he holds from time to time. He will take a couple of hours some day, when it is convenient to the lawyers, then he will leave off, and then he will have a hearing some other day. That doesn't interfere with his court work; that slight practice of law he indulges in does not interfere with the administration of justice. Let me illustrate the various counties which will be affected by the amendment to Section 24. Mr. Chairman, suggestion has been made that we defer reference to the later section until it is brought up specifically before the members of the Convention, and for that reason I will raise that later.

Mr. Vanderlyn — I want time enough to say a word or two in reference to this proposition. I think that there is one question that has not been referred to; there is one idea that none of the gentlemen have properly gotten before this Convention, and that is this, that the position of county judge and the position of surrogate, require a different quality of man in some respects. That is, a lawyer who is well qualified for the position of county judge is not the lawyer perhaps who is well qualified for the position of surrogate and vice versa. Now let me refer to our own county, as to the county judge. We try there, under the present law, criminal cases, including murder. Now, we have had in Ulster county a man of large calibre whom you have all heard of, and whom you all know, Judge Clearwater. He has been county judge of the county for two terms, or three terms. I think he was going on his third term when he was elected Supreme Court judge. Now in the County Court are tried the criminal cases, and the Supreme Court is relieved from that branch of the trial work, and it is important that a good lawyer preside over the county court.

Mr. Tierney —How many terms of County Court are held in Ulster county?

Mr. Vanderlyn — That last term wherein was tried a murder case, the trial proceeded about two or three weeks, besides the other criminal cases that they tried. In County Court a murder case was tried in which the murderer was tried and convicted, and the judge who sat in that court presided not only with dignity, but with ability, and I say that a man of his ability could not have afforded to have taken that office if he had been deprived of the

right of practicing in his private work. But I believe that notwithstanding the fact that he is allowed to practice under the present law in a private practice, that the portion of his time that we pay three thousand dollars for is worth more than the whole time of some of the inferior men whom we would get in that position. In other words, I believe that if you pass this amendment, and I assume we are discussing both branches of the case now.

Mr. C. H. Young — Mr. Vanderlyn, we are only discussing Section 17. When we come to Section 24, the observations which you are about to submit will be more in order.

Mr. Vanderlyn — I beg your pardon, but I understood the Chairman of the Judiciary Committee to say to the gentleman who began the discussion, and I cannot be so much mistaken, that both the provisions of this section and the other, while we have not reached the other section, he said the discussion on both sections would take place at once, and he so informed the gentleman who began the discussion and the discussion has been carried on thus far upon that assumption.

The Chairman — That was through the generosity of the Chair merely. The discussion of the other section is really not germane to this question.

Mr. Vanderlyn — Well, as far as we have gone, Mr. Chairman, we have discussed it.

The Chairman — I appreciate that.

Mr. Vanderlyn —And it appears that we have discussed this section in permitting the opposing view as to this question, and we certainly ought to be allowed,—

The Chairman — The gentleman may proceed.

Mr. Vanderlyn — Yes. Now, I don't want to take much of your time and I ask your indulgence. I have taken very little time before this Convention. Now, I say in our county and I know more particularly about our own county, that the county court is a very important court and that we have and have had for years a good man to preside over the court. Now in reference to the Surrogates' Court. The presiding officer in the Surrogate Court, it does not require a man of the same quality, but a different quality of lawyer, and I think the gentlemen in this Convention who have advocated home rule should allow those counties which are affected to decide this question. In other words, I think that those counties that are affected by the matter of depriving the county judge of the right to practice, if they desire that that shall not be the law, I think that under the principle of home rule which has heretofore been advocated in this Convention, that they should have the say in reference to it, and what they say should have great weight before the Convention.

Mr. C. H. Young — The Committee favors the amendment offered by Mr. Steinbrink which will correct the situation in Richmond county. The Committee opposes the offering of the gentleman from the Northern part of the State on the ground that the sections of this Constitution proposed allow these counties to combine the offices of surrogate and county judge. The Committee, therefore, hopes that the resolution offered by the gentleman will be defeated. The fact is, as to section 17, which we have before us, it has been advocated by the State Bar Association, by the Onondaga Bar Association, by ten judges, twelve surrogates, and only been opposed by two men. Section 24 will be under discussion when reached. It has been under discussion for the last forty-five minutes. Being in the Committee of the Whole we thought we had better let it go, but at the same time, Mr. Chairman, we are in favor of the Steinbrink amendment, we are against the other, and we would like to have the section adopted.

Mr. L. M. Martin — In order to make the effect uniform, I will offer the following:

The Chairman — The clerk will read the amendment.

The Secretary — By Mr. L. M. Martin, page 24, line 22, after "county judge" insert "special county judge."

Mr. C. H. Young — The Committee is willing that amendment should be passed.

The Chairman — The question now is upon the amendment offered by Mr. Tierney. All those in favor of the amendment offered by Mr. Tierney, say Aye, opposed, No. The amendment is defeated. The question is upon the amendment offered by Mr. Steinbrink. Those in favor of the amendment will say Aye, those opposed, No. The amendment is adopted. The question now occurs upon the amendment offered by Mr. Martin. All in favor signify by saying Aye, opposed, No. The amendment is adopted. The question now occurs upon the adoption of section 17. Those in favor of the adoption of section 17 signify by saying Aye, those opposed, No. The section is adopted.

Mr. Wickersham — Mr. Chairman, section 18 is very brief. There is simply one line stricken out as unnecessary, and unless some one desires it read, I move that it be considered as read and that it be adopted.

The Secretary — Section 18. The Legislature may, on application to the board of supervisors, provide for the election of local officers, not to exceed two in any county, to discharge the duties of county judge and of surrogate, and to exercise such other powers in special cases as are or may be provided by law.

The Chairman — No objection being heard, the amendment is considered as read, and the question now is upon the adoption of

section 18. All those in favor of this adoption signify by saying Aye, opposed No. The section is adopted.

Mr. Wickersham — Section 19 is very brief, and if the Committee will exercise a little patience, we will dispose of that, and then adjourn for the night, and take up the City Court matters, which are rather complicated, to-morrow.

The Secretary — Section 19. The electors of the several towns shall, at their annual town meetings, or at such other time and in such manner as the legislature may direct, elect justices of the peace, whose term of office shall be four years. In case of an election to fill a vacancy occurring before the expiration of a full term, they shall hold for the residue of the unexpired term. Their number, qualifications, classification, duties and compensation shall be regulated by law. Justices of the peace and judges or justices of inferior courts not of record, and their clerks, may be removed for cause, after due notice and an opportunity of being heard by such courts as are or may be prescribed by law. Justices of the peace and city magistrates and all other judicial officers whose election or appointment is not otherwise provided for in this article may be elected in the several cities of this state or appointed by some local authorities thereof in such manner, and with such powers, and for such terms, respectively, as are or shall be prescribed by law.

Mr. Hale — Mr. Chairman, as to Section 19, I would like to ask the Chairman of the Judiciary Committee a question. In line 21, and beginning in line 19, " their number, qualifications, classification, duties and compensation shall be regulated by law "; does that mean, for example, that the salaries of justices of the peace should be fixed by law?

Mr. Wickersham — It did so mean, Judge Hale, but there is an amendment that Mr. Cobb is going to offer that clears that.

Mr. Stowell — Mr. Chairman, I offer the following amendment and I ask to have it read.

The Secretary — Page 25, in lines 19 and 20, strike out the word " qualifications ". In line 20, after the word " duties ", strike out the words " and compensation ". In line 20, after the word " classification " strike out the comma and insert " and ".

Mr. Cobb — I offer the following amendment and will say a word in explanation of the committee's proposition after the amendment has been read.

The Secretary — Page 25, line 20, strike out the comma, and insert the word " and ". Same line, strike out the words " and compensation ". After line 21, insert the following sentence: " Their compensation shall be fixed by the boards of supervisors in the several counties."

Mr. Cobb — That should be, after the word "law" in line 21, insert that sentence: "Their compensation shall be fixed by the boards of supervisors in the several counties." So that the sentence will then read: "Their number, qualifications, classification and duties shall be regulated by law. Their compensation shall be fixed by the boards of supervisors in the several counties." That is the only change that is made, leaving the compensation to be fixed by the board of supervisors instead of by the Legislature.

The Chairman — You mean that as a new sentence, do you not?

Mr. Cobb — As a new sentence.

The Chairman — After the period, following the word "law"?

Mr Cobb — Yes, it so states. I also offer the following amendment, which is brief, although it is not written out: Page 26, line 1, after the word "officers" insert the words "in cities". The last amendment that has been suggested, inserting the words "in cities", is withdrawn.

Mr. Quigg — You speak of providing for the election of supervisors in the counties. Suppose the amendment that has already been proposed by the Committee on County, Town and Village Government is adopted, and the Legislature provides a form of government in which there are no supervisors.

Mr. Wickersham — Mr. Chairman, I move that the Committee do now rise, report progress, and ask leave to sit again. This section is too long to be settled to-night.

The Chairman — The question is on the motion of General Wickersham. Those in favor will signify by saying Aye, opposed, No. The motion is carried. (The President resumes the Chair.)

The President — The Convention will come to order. The members will be good enough to take their seats.

Mr. Wagner — Mr. President, the Committee of the Whole has considered Special Order 61, begs to report that it has made progress and asks leave to sit again.

The President — The question is on granting leave. All in favor will say Aye, contrary, No. The leave is granted, and the Convention stands adjourned until ten o'clock to-morrow morning. Whereupon, at 10:45 P. M., the Convention adjourned to meet at 10 A. M., Saturday, August 21, 1915.

SATURDAY, AUGUST 21, 1915

The President — The Convention will please be in order. Prayer will be offered by the Rev. C. O. S. Kearton.

The Rev. Mr. Kearton — In the Name of the Father and of the Son and of the Holy Ghost, Amen. Direct us, Oh, Lord, in all our doings with Thy most gracious favor, and fill us with Thy continual help, that in all our works begun, continued and ended in Thee, we may glorify Thy holy name, and by Thy grace may add to the safety, honor and welfare of this nation. These and all other blessings we ask in the name of Jesus Christ our Lord. The grace of our Lord, Jesus Christ, the love of God and the fellowship of the Holy Ghost be with us all now and evermore, Amen.

The President —Are there any amendments to be proposed to the journal as printed and distributed? No amendments being proposed, the journal stands approved as printed. Presentation of memorials and petitions. The Chair lays before the Convention a communication from the President of the Buffalo Chamber of Commerce, which will be referred to the Committee on Canals. Any further memorials or petitions? Communications from the Governor and Other State Officers. Notices, motions and resolutions. The Secretary will call the roll of districts.

Mr. Wood — Mr. President, owing to important business which takes me out of the State, I desire to be excused from attendance from 11 o'clock to-day until Thursday night.

The President —All in favor of granting the excuse will say Aye, contrary, No. The excuse is granted.

The President — Reports of standing committees. Report of select committees.

Mr. Berri — Mr. President, I will send a resolution to the desk from the Printing Committee in a moment. There is a shortage of records Nos. 38 and 40, and it is very much desired to have 200 extra copies of those two records printed.

The President —All in favor of the motion to print 200 extra copies of the papers indicated will say Aye, contrary, No. The motion is agreed to. Without objection, third reading will be dispensed with. Unfinished business of general orders. Special orders. The Convention will go into the Committee of the Whole for consideration of the special order of the day. Mr. Wagner will resume the Chair.

The Chairman — The Committee will take up the consideration of Special Order No. 61.

Mr. Stowell — I desire to say a very few words in relation to the amendment which I offered last night, which, in effect, changes the provisions of the proposed amendment.

Mr. Cobb — Before this article is discussed further I desire to say just a few words regarding the amendment offered by the Committee last night and then you may have the floor, if that is agreeable.

Mr. Stowell — With that understanding, I will yield to the gentleman.

Mr. F. Martin — If the gentleman will yield, I would like to offer an amendment to be discussed with the other amendments, if at this time, Mr. Stowell and Mr. Cobb will allow me.

The Chairman — There will be an opportunity to submit all amendments. Mr. Cobb wanted to present the amendments offered by the Committee.

Mr. Cobb — The amendment sent to the desk is in place of the one stated last evening somewhat informally. I think the secretary had better read it.

The Secretary — Page 26, line 5, at the end of the sentence insert: "The boards of supervisors or other officials exercising the power now vested in such boards shall fix the compensation to be paid or allowed to justices of the peace in towns and cities for their services in criminal matters."

Mr. Cobb — I want to say just a word about the reasons which led the Committee to make this change in the section relative to justices of the peace. A great many attorneys appeared before the Judiciary Committee, several being members of the Convention, to explain their grievances in connection with justices of the peace. Among the suggestions that were made was the one that there was only needed one trial justice in a town; and that, instead of having four thousand justices of the peace in the State, we should have only one in a town, for one competent justice could be found and he would be sufficient. Others suggested that we continue the four justices of the peace, but that, in one form or another, one of those justices should be designated as a trial justice. Another suggestion made was that in towns of four thousand inhabitants, or thirty-five hundred inhabitants, the justice of the peace who tried the cases should be a lawyer. But the principal complaint that came to the Committee was with reference to fees in criminal matters. In some towns, 25 to 33⅓ per cent. of the total expenses of the town were made up of fees paid in criminal matters, largely fees paid to justices in reference to the tramp question. In one town, not far from Albany, I think it was the town of Colonie, the fees amounted to a great many thousand dollars, and the fees of the constable equally large. It

appeared that at some point where the trains stopped in this town the tramps on their annual flight south were taken off the train, collected before the justice, sentenced, sentence suspended, and seven dollars in each case charged up to the town. So that this was brought to our attention sufficiently without going into details, to indicate that something ought to be done. Instead of indicating in the Constitution an outline of a definite course of procedure, we have simply suggested this change which would permit the Legislature, if it saw fit, and if there were demand in that direction, to satisfy the needs of the towns. We have changed this sentence in Section 19, the third section, their number, qualification, classification and duties shall be regulated by law. We have provided that the compensation of the justices of the peace in the towns and cities of the State should be fixed by the boards of supervisors or other similar governing bodies. If the latter section of the Constitution relative to the allowance of fees of judicial officers remains as it is, the boards of supervisors could either compensate the justices by allowance of fees in criminal matters, or they could fix their compensation. In other words, it would place it in the hands of the board of supervisors, where they could exercise a restraining influence on any justice of the peace, who was inclined to make light of the fee and exercise it for his own personal profit, rather than in the interest of justice.

Mr. Kirby — Your Proposed Amendment, as I gather it, is expressive of what the statute is now. My recollection is that the board of supervisors now fix the compensation for the arrest and trial of vagrants and tramps and also provide for the constables or officers that are engaged in the work of transporting them to the penitentiary or wherever they may be assigned. I understand the Legislature has already given the board of supervisors that power, and in fact in pursuance of that statutory authority I do know of some counties where they have fixed the fees in such cases at a minimum charge for the purpose of breaking up the industry, so to speak.

Mr. Cobb — Mr. Chairman, it was the Committee's idea, and I think if it met with the favor of the delegates from the rural districts we should have been glad to carry it out, that the fee system, so far as the justices of the peace are concerned, should be absolutely abolished. By this amendment we have intended to put the matter in such shape that the board of supervisors if they saw fit could fix the salary rather than compensation by fees. But in towns where there was no grievance, and where the fee system was working satisfactorily, providing no change is made in this later section, they could still leave the matter of fees. But should the Convention, as has been suggested by the Committee in Section 24,

bracket the words "except justices of the peace," their compensation would have to be fixed by salary — at least so far as criminal matters are concerned. In yielding this point limiting the matter to criminal proceedings, we have probably made it necessary to strike out the fee system in the later Section 24, abolishing all fees.

Mr. L. M. Martin — Mr. Cobb, the amendment proposed, page 32, line 16, allows the fee system to prevail as far as civil cases are concerned. I think that is agreeable to the Committee. That might be taken up in connection with your suggestion. Will that Section then be modified by the action that the Committee takes on Section 19?

Mr. Deyo — Mr. Chairman, I would suggest that the first word in line 21 of page 25, be changed to "prescribe" in place of "regulated." Line 21, of page 25. You speak of their duties being regulated." *Prescribed,* isn't it?

Mr. Cobb — Well, regulated has been the provision.

Mr. Deyo — Well, you did not have "duties" in there before?

Mr. Cobb — I don't see any urgent need for any change. I don't know that it makes any difference.

Mr. Wiggins — Will the gentleman permit an interruption for the purpose of inquiry? I observe, Mr. Cobb, in the amendment you offer you give the right to fix their compensation, etc., I just don't remember the language, but the last sentence is the one I had in mind — for their service in criminal matters. Now I think it is recognized in small places, that the evil not only exists in criminal, but in civil matters, and if your Committee wishes to cure this evil, it seems to me you should not go half way, but should go the whole distance, and take it out of civil matters and criminal matters as well, because I think it is generally recognized that justices of the peace in civil matters decide cases having in mind who can pay the fees after judgment is rendered and I think you ought to strike out the words "in criminal matters" if you want to cure the evil.

Mr. Cobb — Mr. Chairman, in answer to the delegate, I would say as I said before that that had been the idea of the Committee, and yet no one appearing before the Committee out of all those who came with complaints, made complaint of the conduct of justices of the peace in civil matters. So far as it was presented to us the complaint was confined to the action of these officers in criminal proceedings.

Mr. Wiggins — Will you note my appearance now?

Mr. Cobb — Your appearance is noted.

Mr. Stowell — Mr. Cobb, in what line is your proposed amendment inserted?

Mr. Cobb — It is inserted after the word "law" in line 5 of page 26.

Mr. Stowell — Just one moment, until I get that. May I ask the Clerk to read that proposed amendment.

The Secretary — The board of supervisors or other officials exercising the powers now vested in such boards, shall fix the compensation to be paid or allowed to justices of the peace in towns and cities for their services in criminal matters.

Mr. Stowell — Mr. Cobb, as I understand that amendment, it is the intent to permit the board of supervisors to fix the fees in criminal cases, or the compensation.

Mr. Cobb — Yes.

Mr. Stowell — As they desire.

Mr. Cobb — Yes, sir.

Mr. Stowell — And that the fees in civil cases are left as they are now, fixed by statute; am I correct?

Mr. Cobb — That is true. And I might say, Judge Stowell, that this yielding on the part of the Committee was due to the sentiment expressed by yourself and many other delegates and is in the nature of a compromise.

Mr. Stowell — I am asking this for a certainty, that is all.

Mr. Cobb — Yes.

Mr. Stowell — Now is it the intention of the Committee to leave lines 19 and 20 on page 25 precisely as they are; in other words, is not the word "compensation" in there rather antagonistic to what you have said that you intended to do?

Mr. Cobb — That is stricken out by the amendment.

Mr. Stowell — It is stricken out?

Mr. Cobb — Yes.

Mr. Stowell — I am asking this so as to be certain about it.

Mr. Cobb — Yes.

Mr. Stowell — Now, is it the intention of the Committee to leave the word "qualifications" in there?

Mr. Cobb — Yes, it is.

Mr. Stowell — Well, now, may I ask what the theory of the Committee is, in inserting the word "qualifications," as applied to justices of the peace, and what kind of qualifications is meant? Is it a civil service examination, or may it be an act of the Legislature that they must be attorneys at law, or what is it, if we may have that explanation?

Mr. Cobb — That matter is left to the Legislature, and in a case of this kind, you, as a practical man, know that they are quite responsive to the local wish. Now this will be a fair illustration, it was urged to this Committee, that in towns of four thousand inhabitants, where there is a good sized village and several

lawyers, that the justices of the peace will have considerable business, and that the justices should be attorneys-at-law, and the Legislature under this provision would have the right, if they saw fit, to prescribe such a condition.

Mr. Stowell — But not necessarily prescribe?

Mr. Cobb — Oh, no, this leaves the whole matter in the Legislature, as, perhaps, it has always been.

Mr. Stowell — And let me ask you a further question, Mr. Chairman. Can the Legislature, or could the Legislature prescribe these qualifications without making it a general law and applicable to all the towns in the State?

Mr. Cobb — Yes. In considering the so-called general laws which have been passed, I have no doubt that one could be framed that might have application to only a portion of the county, but I can assume, if the Legislature made such a recommendation as was suggested to our Committee it would be uniform as to towns of a certain size. For instance, it might change the number of justices of the peace in a town having six, seven, or ten thousand, or they might change their qualification.

Mr. Stowell — We have in our county towns of probably not to exceed three thousand inhabitants, and we only have two or three small villages outside of the two cities, and I am fearful, as this stands now, that if a qualification were prescribed by the Legislature, that it would apply to all the towns not only in the county, but in the State. That is the only fear I have. Otherwise, I am agreeable to your amendment.

Mr. Cobb — Well, I don't think, Judge, that you need have any apprehension that the Legislature would force on the towns of the State an unworkable provision, one that would prevent their having a justice of the peace.

Mr. Stowell — Well, probably not.

Mr. Cobb — We felt they ought to have that power.

Mr. Coles — Mr. Chairman, I would like to ask Mr. Cobb a question. That amendment, Mr. Cobb, which you have suggested, uses the words "boards of supervisors, or other officials now exercising the duties or powers of the board of supervisors." Have you given due consideration to the use of the term, or the word "now"? It is very possible that there may be some change in the governing board and still that change not be in existence at the time of the adoption of this Constitution.

Mr. Marshall — It does not say "now exercising."

Mr. Cobb — I don't think the word "now" is in the amendment.

Mr. Marshall — The word "now" occurs in a different place, and does not have the effect referred to by Mr. Coles.

Mr. Cobb — It is intended to apply to exactly the situation you suggest, that if some other body should be constituted in place of the board of supervisors, then the body exercising those powers should fix the fees or the compensation.

Mr. Coles — I understood the clerk to read the amendment as "now exercise."

Mr. Cobb — But it was not so intended.

Mr. Coles — I guess it is "now exercising."

Mr. Marshall — That better be read again.

Mr. Cobb — The boards of supervisors or other officers exercising power now vested in such boards.

Mr. Coles — Mr. Cobb, another question concerning the language: At line 20 on page 25, I note the word "may" has been bracketed and "shall" inserted in italics. I suppose your Committee gave due consideration to the use of the word "shall" rather than the word "may."

Mr. Cobb — Yes. We felt that the Legislature should take some action in this respect and the bill that we have framed falls far short of that that seemed to be urged by the men who appeared before us, many of whom wanted the justices of the peace absolutely abolished, complaining that they had become a nuisance, that they had fallen behind, and that they no longer served any useful purpose. We felt we took a very modest stand in permitting the Legislature to regulate their qualifications, classifications and duties.

Mr. Stowell — Just one question. Mr. Cobb, should not — in line 20 on page 25, should not the word "shall" near the end of the line be stricken out and the word "may" be inserted in its place?

Mr. Cobb — That question, Judge, I just answered, in response to a question from Mr. Coles. In effect, saying that we felt, in view of all the evidence that was presented to us, that the Legislature should take some action with reference to the subject of justices of the peace within the limits laid down in this amendment.

Mr. Stowell — Precisely. But isn't it a better term to use, having all things in view which we seek to accomplish in this case, to use the word "may"? It gives them all of the power but doesn't make it mandatory. May I not ask the Committee to accept that change from "shall" to "may"?

Mr. Cobb — That word "shall" was used after considerable deliberation on the part of the Committee, which it is not necessary to go over. And so far as I know it meets the Committee's desire in this respect.

Mr. Stowell—Well, I am asking the question now, to be

answered by the Chairman of the Committee, if he will be so kind as to do it.

Mr. Cobb—We felt the attention of the Legislature should be—in view of all the complaints that came to us, should be directed to this subject, and that they should pass on the question.

Mr. Stowell—Mr. Chairman, it seems to me that the word "shall" ought to be changed to the word "may." That gives the Legislature direction, control and the exercise of its discretion.

Mr. Cobb—Just one moment. I understand you have offered an amendment substituting the word "shall" for the word "may"?

Mr. Stowell—The amendment I have offered strikes out the words "qualifications," "duties and compensation." Now I am inclined and desire to accept your amendment because we had some talk about it last evening and I want to do, as I said, what I felt was the proper thing to do. It does seem to me that the word "shall" ought to be changed to the word "may." If that change should be made, as far as I am concerned, I would be satisfied.

Mr. Cobb—If we should make that change, we would fall far short of meeting the issue, not of people from a few towns but people of hundreds and hundreds of towns in this State, for no county has escaped this evil, and practically no town through which a railroad runs. Now we do not say how far they shall go. They haven't got to make any change of moment, but at least they will act along these lines to some extent. If you will permit me, Judge Stowell, here is a letter that came this morning, written last evening, from a county judge and surrogate, in which he says on this subject: "I have followed the revision of this article with interest and have been particularly concerned in relation to courts of justices of the peace. In my opinion, these courts are the weakest member of the judicial system and I am greatly pleased to see that the Judiciary Committee has had time to consider the amelioration of conditions in that court. While this court is an humble court, it is essentially the neighborhood or poor man's court, and on that account is worthy of the best attention that can be given it. I am particularly pleased that your Committee at one stroke has eliminated the most vicious feature of this court by abolishing the fee system. This system in the past has been a breeder of graft and graft has led to oppression." Now you will see that we have doomed this gentleman to disappointment by accepting the compromise that we have in the direction of fees.

Mr. Stowell—Who is this gentleman?

Mr. Cobb—This is the county judge and surrogate of Essex

county, Mr. Berne A. Pyrke. Now on this other question, suppose that the position that is taken is none too firm in the matter — we should dislike to substitute the word "may" for "shall" because it would not direct the attention of the Legislature to the subject and might result in nothing being done along the lines that all of the people who have appeared before us have seemed to wish.

Mr. F. L. Young — Mr. Chairman, it is very easy for those who are not acquainted with the temper and habit of thought of residents of rural districts to make a serious mistake about the courts of the justices of the peace. Those who live in the rural districts — and I have spent a part of my life there — hold the justice of the peace in high regard, notwithstanding the fact that the court is frequently abused, and notwithstanding the fact, too, that in many cases very ordinary men execute the duties of that office. I was interested a little while ago, in looking up some matters of history in connection with this article, to find that the people of the State of New York were so jealous of the office of justice of the peace that, when an amendment was offered looking to exactly this same subject and providing that the county judges should appoint the justices of the peace in the county, it was defeated by the very significant vote, I think, approximately, of 125,000 to 1,600.

Mr. Marshall — That was back in 1826, as I recollect.

Mr. F. L. Young — That is unimportant.

Mr. Marshall — That was ninety years ago, when it was a different country.

Mr. F. L. Young — That is unimportant. But there is a certain loyalty, and everybody knows it, to traditions among the American people and all you have to do is to make an excursion into the country districts to find that to be the case. Now what does this amendment propose to do? It proposes to permit boards of supervisors to fix salaries of the justices of the peace. Have you considered where that leads you? All the affairs of the town are administered by a town board, consisting of six members, and four of the six are justices of the peace. That board is presided over by the supervisor. The supervisor goes from his town board to the county seat and, there he is called upon, with the other supervisors, to fix the salaries of his justices of the peace at home; and he knows that when he goes back to his town board and asks them to stand for some proposition which he has in mind, he needs the votes of the four justices of the peace. Had you considered that? Where would it lead you? What would be the inevitable result of putting an appointment such as that in the hands of the supervisors? Second, every man who has lived in a rural district knows that nearly all the justices of the peace try no cases, either

civil or criminal. Their full duty is performed by attendance on meetings of the town board. I know a great many justices of the peace who never issue a summons or subpœna of any sort or description. They attend meetings of the town board and give the town the benefit of their advice, whatever it may be. Now will you kindly tell me how it is going to be possible for the board of supervisors to make an equitable adjustment of salaries throughout a whole county? In our county we have nineteen towns and they vary in population, they vary in wealth, and they vary in intelligence. There is no doubt about that. Will you tell me how a board consisting of thirty-eight supervisors, will fix the salaries of the justices of the peace in nineteen towns? And who are going to vote on this? In my own county we have three large cities. What do they care about the salaries of the justices of the peace in the towns, that are to be charged to the town? Yet, in this proposition, you say they are going to fix the salaries of the justices of the peace in towns, no part of the expense of which is charged against the city.

Mr. Cobb — Is the gentleman aware that under the proposition as it now stands, from the Committee, the board of supervisors would only fix the compensation to be paid to justices in criminal matters, and that there is no suggestion so far whether it should be by fee or by salary?

Mr. F. L. Young — I understand that perfectly. If it is to be by fee, that is what we have now.

Mr. Wiggins — As I understand it, this amendment is designed to abolish that which they say now exists. They don't want to have fees; they want to abolish fees, isn't that correct?

Mr. Cobb — Yes, if the fee system could be abolished, the Committee believes that a great improvement will be made, but we would at least like to have the board of supervisors of a county like Albany, having a town in it like Colonie, where they have been trying to remedy the evil for several years, have power to say to a justice of the peace in a particular town that his compensation shall be a certain amount. It gives them power to discipline and to regulate, which seems to be needed in some of the counties, if not in most of them.

Mr. F. L. Young — Upon that suggestion, too, let me call your attention to this: The evil of which Mr. Cobb and others have spoken is a real evil and we had it to contend with in our own township. But when the justices of the peace and the constables were confronted with the statement that, if they did not stop the maladministration of their offices, a charge would be laid before the Grand Jury, they stopped immediately. That was mighty effective. Let me call your attention to the fact that the proposed

amendment will very likely interfere seriously with places where, in a village, in a town of course, a police justice is already under salary, who takes charge of all these matters and who keeps a careful record of the expense of it and puts in a bill against the town for taking care of the tramps and the vagrants, as you say in your argument. Mr. Chairman, I cannot help feeling that a further consideration of this proposed amendment on the part of the Committee will show them that it is utterly impracticable, unworkable and will lead to greater mischief than the thing they are trying to cure.

Mr. Cobb — If the board of supervisors should fix the fees which the justices should receive in criminal cases, does the gentleman think any harm would come from that practice?

Mr. F. L. Young — I am quite willing to transfer from the Legislature to the county officers the fixing of the fees of these offices, but let me remind you that that is utterly in conflict with all legislation on that subject. The salaries of all officers which are of a judicial character have always been reserved to be fixed by the Legislature, as far as I know.

Mr. Law — Mr. Chairman, speaking for a purely rural county of seventeen towns, I would say that any attempt to make the justice of the peace a salaried officer would be a calamity. In fifteen of our seventeen towns it is very rare that a justice of the peace has a single dollar's charge for criminal matters. In the two towns, Fort Edward and Whitehall, which are canal and railroad towns, the difficulty has been met by making the justice of the peace a salaried officer, which meets that difficulty very well indeed, but in our purely rural towns the justice has had no criminal business at all, nor seeks any.

Mr. E. N. Smith — Mr. Chairman, it seems to me that the Committee in trying to get rid of a manifest evil, by the generality of its provision is going to get into more trouble in a practical way than the evils which they seek to cure create. I recognize the evil, and perhaps the evil should be cured, but I certainly hope they will at least strike out this word "shall" in line 20 and leave the word "may" for the reason that as the provision originally was, the Legislature had the power to fix the number and classification of justices of the peace but it did not have the power to fix their qualifications and duties so that if the matter depended upon the power of the Legislature to fix the qualifications and duties the Legislature does not have the power until it will have been given by this proposed provision and I don't think the mandatory provision "shall" is necessary or ought to be included. Now I want to re-echo all that Mr. Young has said about the provision as to the salaries being fixed by boards of supervisors, for justices of

the peace. He has told the story. Its effect is manifest on its face. The supervisor presides over the town board, made up largely of the justices of the peace, and you can see, right off, the conditions you would get into if you tried to fix compensation of a justice of the peace by the supervisors. And as Mr. Law has said, in most counties, in most towns, practically in all of them we have none of the trouble that is complained of, the charges of the justice of the peace are practically nominal and if you get justices' compensation into the line of a salary proposition, you will have fifty or eighty-five fellows, eighty-five men knocking at the door of the board of supervisors in a county for compensation and the board of supervisors having the power to do it, and the mandate under the Constitution to do it, if you please, are affected by the pressure of the town board over which he presides, and you can see right off that it is going to lead into great embarrassment. Now is there not some way to get out of this trouble, to get away from the sacred tradition, if you please, that the office of justice of the peace is a constitutional office that cannot be disturbed as it has been from the foundation of this State, and cannot we reach just this evil by some simple provision? I think the Committee can, without stirring up the whole State over this matter of comparatively small importance.

Mr. Hale — Mr. Chairman, I very much hope that the word "may" instead of "shall" will be the constitutional system. Now there are apparently a great many evils coming from the fee system. We have in St. Lawrence county towns, four justices of the peace, making 128 justices all told. Some towns by reason of the geographical distribution of inhabitants have five justices. I think we have got one town that has six. I think we have about 140 justices of the peace. They are not all called justices of the peace because village justices are called by another name, but their functions are those of a justice of the peace, both civil and criminal. Now if you compel the establishment of a salary, there are hardly any two of those men that do the same kind of work. Mr. Young is entirely right when he says that the normal justice of the peace does not issue warrants unless where a crime has happened to be committed in his immediate neighborhood, and in civil cases — there is almost none of it. These men are the men who make up the town legislature, namely, the town board, and I cannot see how in the world you can do anything by placing them on a salary. Now I am entirely willing that it should be left to the board of supervisors who desire to deal with the problem because we have some counties with only three towns, or four or five. I don't know how many towns there are in Rockland county. One of the counties in Long Island a few years ago had a board of

supervisors of three boards. Now it is entirely possible to deal with the question of salary in such counties as that, but I don't know how in the world you can do it in St. Lawrence county with thirty-two towns. It does seem that it ought to be left to the counties to choose whether it shall or not.

Mr. Cobb — The gentleman's views in this respect are entirely met by the amendment proposed by the Committee. The amendment offered this morning would permit the board of supervisors to leave the matter of fees in criminal cases precisely where they are if they see fit to do so, or in case it was necessary to exercise their power of regulating the fees to put an end to some evil in the county, it gives them that right. They are not compelled to. There is nothing mandatory about it.

Mr. Hale — I beg your pardon, then, if I misunderstood it.

Mr. Cobb — The gentleman has suggested that I call attention to one or two of the suggestions that were made before the Committee hearings. Mr. George W. Stettin, attorney for a town near Fort Edward — I take it that the members of this Committee are familiar with the Fort Edward case of Barber against Howland, 155 N. Y., which possibly has not been spoken of to you by the other men who came before you on this bill. I would like to refer to this case. It was an act permitting the selection of a police magistrate in Fort Edward and giving him a salary of $300 a year and the appointment of policemen, and giving them the duties of constables, which was declared unconstitutional. He refers to Judge O'Brien's opinion in that case which is as follows: "It appears, therefore, that this rural town, with a population of six thousand people, all told, and a territory ten miles in length and three or four miles wide, was provided with adequate machinery for administering the criminal law and preserving the public peace. The Legislature decided that both economy and efficiency would be promoted by concentrating the duties of examining magistrate and conservators of the peace in this town in two persons, and relieving the justices of the peace and constables from all duties in that regard. That it was not a wanton or arbitrary interference with the local affairs of the town, appears from a very significant affidavit by the supervisor of the town and chairman of the board of supervisors of the county, which appears in the record and is not denied or questioned. The origin and purpose of this legislation is there clearly stated. It is shown that the statute was passed at the request and solicitation of a large majority of the people of the town, not only for the purpose of better conserving the cause of law and order, but of reducing the burden of taxation, by putting an end to the ill-considered and ill-advised action of justices of the peace and constables in soliciting and procuring tramps and vagrants to be arrested and com-

mitted for maintenance to the county jail for the sole purpose of enabling the justices and constables to present bills for services against the town or county, and that this practice had become such a grievous abuse that upon more than one occasion the Supreme Court had instructed the grand juries to inquire into the same."

It appears that the justices of the peace and the constables, like the silversmiths of Ephesus, were not satisfied with the new law. It damaged their business and reduced the opportunities for making money, and they appealed to the courts for protection, and thus far they have had it, since it has virtually been held that, after a justice of the peace or a constable has been once installed in office, the lawmaking power of the State is powerless to deprive them of the opportunity of earning fees from the town or county in looking after tramps and vagrants, and acting occasionally in the early stages of other cases of a criminal character. Now, in that case, notwithstanding that decision in the 155th New York, this town is still struggling with the question. Now, it is perfectly apparent that if the board of supervisors of that county had power to fix the compensation of the justices, whether it be by fees or whether it be by salary, they at least can put an end to that evil. If it were a single instance here and there, there might not be occasion for our spending this time in considering it, but it is a crying evil. From all parts of the State, from every county of the State come suggestions of one kind or another, that we ought to do something or permit something to be done that would alleviate this evil. Now, has the Committee gone too far? It seems to me that if we are derelict at all, it is not in having gone far enough in saying to the boards of supervisors, "Where you have such conditions as these in your county, we will permit you to step in and regulate the matter by an adjustment of salary or fees or in any other manner you see fit."

Mr. F. L. Young — Mr. Cobb, Mr. Lincoln tells me that in his county the board of supervisors is made up of 54 members, 27 of which came from the city of Buffalo, and the others from near towns. That is a condition that exists in Westchester, although the division there is pretty nearly equal.

Mr. Cobb — Then it is a splendid body to consider such a question as fixing the compensation —

Mr. F. L. Young — But, Mr. Cobb, half of that body in Erie county is fixing a tax on a territory that pays no part of the tax at all. That is the point. Is that serious? In our county, the supervisors from the cities who pay no part, of course of the tax of township, there are 19 in the board of 38.

Mr. Cobb — Have you justices of the peace in your cities?

Mr. F. L. Young — They don't act at all.

Mr. Cobb — I say, have you justices of the peace?

Mr. F. L. Young — In the city of Yonkers there are some justices of the peace, who do not act at all, and in the others there are no justices.

Mr. Cobb — Well, I don't know how much apprehension this suggestion would excite in the minds of the other delegates, but it seems to me that there is no danger. In case the city had a slight preponderance, it seems to me that they would undertake to take the side of the justice of the peace and prevent cases of injustice though against the wishes of the supervisors from the towns. I never knew of anything of that kind to work out.

Mr. Stowell — Not being able to agree with the Judiciary Committee, as to some points which were discussed last evening, especially with the chairman, I must insist upon my original amendment. Now, it seems to me that the evils complained of here are the same class of evils that we see arise almost every day in some part of the community where there is some infraction of the law, where there is something to be remedied, and the people in that community not having the courage to go to the courts and remedy those evils in the way pointed out to the courts, come here to this Constitutional Convention and want to have us write into our organic law a remedy for the evils which are inflicted upon those communities. Now, there are real evils in some of these communities. There is no doubt about that. I know we have had the same trouble up in our county, but when we had that trouble, we went to the proper authorities, and went to the proper parties who were doing those things and they were stopped, and they have not been repeated since, and they should proceed likewise, and if the gentleman from Clinton county last night — I beg your pardon, I see he is absent. Now, this tramp evil can be cured. My friend from one of the counties tells me of cases up there where they have the same trouble. I believe that I recollect, they indicted the men for conspiracy, or on some other charge, who were engaged in this attempt to fleece the community, and the evil has been stopped. Now, I do not think that the Constitutional Convention of the State of New York ought to be called upon to remedy evils in some little community, or a number of little communities in this State.

Mr. Law — Reference has been made here to the Fort Edward case in the Court of Appeals, and that is somewhat enlightening. As I said when on my feet before, fifteen of our seventeen towns are purely rural towns, and in those towns there is no difficulty whatever with justices of the peace charging illegal fees, or burdensome fees. Now, as a rule, there is no charge by the justices in those towns in the way of fees in criminal cases, their duties being confined almost exclusively to town business and the charge for acting on the town board.

But in the towns of Fort Edward and Whitehall there were difficulties. As you know those are railroad and canal towns. Both towns sought to remedy the difficulty by practically the same means, that is, by making their police justices and constables salaried officers. It had worked very satisfactorily for the people of the town of Fort Edward, but a case was brought to the attention of the court as this decision suggests, and it was declared unconstitutional. The result is that to-day they are working under the old system in Fort Edward and any justice of the peace or constable of the town of Fort Edward who cannot make a good living by his office is a bungler. In Whitehall, notwithstanding this decision by the Court of Appeals, they are still working under the salary system, and when in that town the justices of the peace, under the fee system in criminal cases, had been able to clear up eight to ten thousand dollars a year, they now perform the same functions and they are paid $2,000 a year. If this amendment means that the board of supervisors can have the power to fix fees in our fifteen rural towns and fix salaries in the two towns where there is and has been this trouble, I am for it. Otherwise, I will have to be against it.

Mr. Coles — In the little county of Nassau, on Long Island, we have three towns which have been referred to already, and, of course, we have a great deal of practice in the justices' court. The justices in the towns of that county receive in fees all the way from five to ten thousand dollars a year. They are not lawyers. They are laymen in great part, and the question which has been put to me more than any other since I have been in this Convention is, are you going to remedy the evil which we have in the matter of justices of the peace. The justice of the peace court is the poor man's court I know. It is the court in which there is not supposed to be technicalities, but it has grown to be with us, and I suppose it is with other places in the State, the most technical court in the State, and we have practitioners in that court who make a practice of relying upon some decision to lead their opponent into a trap and then take an appeal with the intention simply of recovering costs on appeal. That is done invariably. Our justices of the peace also in criminal matters issue writs and the persons arrested for speeding are usually taken across the county to special justices of the peace for some reason or other, and the fees of those justices of the peace run up into the thousands of dollars. It seems to me in courts such as we have in Nassau county, where justices of the peace hold court every day in the week, except Sundays, that the presiding officer should be a lawyer, and we wish that some modification should be put into the Constitution by which it may be indicated that the justices of the peace, in our county at least, should be members

of the Bar. We have attempted several times to have modifications of the law made, but have been confronted every time with the fact that this is a constitutional office and you can not make qualifications for an official to act as a justice of the peace. I urge that some modification be made in the article so that we may make some qualification for the official who is to act as justice of the peace, especially in those counties adjoining the great city of New York, and I think also there should be a provision for compensation by way of salary and not by fees.

We have had the tramp trouble time and time again. It is watchfulness on our part all the time, and we cannot eradicate it entirely, and now it is not the tramp so much as it is the speed law violator, who is arrested at one end of the county and carried to the other end of the county and there prosecuted. He is taken before some favorite justice of the peace. Whether there is a division of fees or not, no one knows, but we know that for some reason or other particular automobile cops favor particular justices of the peace at the far end of the county. I introduced in this Convention an amendment using the word "qualification", but leaving the word "may",— I still feel that that word "may" should be left in the Constitution. It ought to be permissive and not mandatory, so that counties desiring the change may come to the Legislature for that purpose, and though the change be made by general act, yet it could be so qualified, in some way, as to apply to certain counties of the State.

Mr. R. B. Smith — It seems to me we are too apprehensive, we countrymen, about the effect of the proposed amendment offered by Mr. Cobb. This is an old difficulty which the Legislature has been trying to meet and to deal with for thirty years. Now, how is it to be done? In our county, with nineteen towns, we have just one where we have this difficulty, and where the traffic between the justice of the peace and the constable and the penitentiary is so keen that they have a path worn from that village to the penitentiary and back again, and the town has to settle. We did threaten criminal proceedings, the town and county both, and we went so far as to say we would charge them with felony. We threatened criminal proceedings, we used moral suasion, we trimmed two or three fellows down there, and we sought relief in other ways, and the question is, how are you going to do it? The practical proposition would be for the Legislature to say that in that town the justices of the peace would have to settle; if necessary, there ought to be possible some special legislation about those fees. I have been a member of the board of supervisors and I am quite as keen as to the powers and duties and dignity of the board of supervisors as I am of those of the Legislature. I believe in both

bodies. It seems to me that the practical proposition is to put it right up to the board of supervisors and I know what they would do in our county. They would make the compensation of the justice of the peace in one town salaried, and in other towns exactly just where they are now and I think this amendment accomplishes that purpose. If it does not, it is absolutely no good, because that is precisely the power we want, and that is precisely the power that the Legislature does not want to exercise, even if it has power to do it.

Mr. Wickersham — We have spent an hour discussing this part of the section, and may I call the attention of the Convention to one other portion of the section, which I also understand will give rise to discussion, and that is the part which applies to city magistrates. This section deals both with justices of the peace and city magistrates in cities. It applies particularly, of course, to the city magistrates in the city of New York who are now under the control of the Legislature. The Legislature has provided for their appointment by the mayor. It was thought wise by your committee, after very full consideration of the subject, to leave it just there, subject to the control of the Legislature, where it has been for twenty years past. Some people wanted us to make the selection elective by the Legislature; and others to preserve it as appointive. The Committee after full consideration of the subject deemed it best to leave it in the hands of the Legislature, and we recommend that to the consideration of this Committee.

Mr. F. Martin — Mr. Chairman, I believe the discussion on the other part of this section is closed, and I would now ask that the amendment which I offered be read.

Mr. Wiggins — Mr. Chairman, just a minute. Mr. Martin, with your permission, before that is read, I would like to say this very briefly: That if this Committee desires to remedy the so-called evil, then they ought to go one step farther and strike out the last part, the last three words " in criminal matters " ; because, if it exists in criminal matters, it exists in civil matters. I think it is wrong to provide for the evil so-called, which exists in justices' courts, solely in criminal matters, and if it is not changed I will vote against the entire amendment when it comes to that point, because it seems to me that the amendment so drawn was drawn more by the men from the large cities, rather than by those who come from the country districts and who are familiar with the conditions; and if you are in real earnest and want to remedy this evil, then you should cut off the fees in civil matters as well as in criminal matters, because many justices of the peace practice for their fees in civil matters, and the one controlling question when they decide these cases in the poor man's court, is which

is the richer of the poor? Who can pay the fees? And many times they exact the fees before they even try the case, and where they do not do that it is because of the fact that they know one of the litigants can pay; and if you want to remedy this evil then go on, cut right down to the bone, take out the words "in criminal matters," so that they may fix compensation in both civil matters, and criminal matters, and I should like to make that as an amendment that the last three words "in criminal matters" be stricken from the amendment offered by Mr. Cobb.

The Chairman — You offer that as an amendment to an amendment?

Mr. Wiggins — Yes, an amendment to an amendment.

Mr. F. Martin — Mr. Chairman, will the Clerk please read my proposed amendment?

The Chairman — The Clerk will read the amendment offered by Mr. Martin.

The Secretary — By Mr. F. Martin, strike out on line 1, the words "or appointment" and on line 3, page 26, strike out the words "or appointed by some local authorities thereof".

Mr. F. Martin — Mr. Chairman, the discussion on this section has taken so long, that I will only take a few minutes to point out the reasons why I think my amendment should be adopted. At the present time every judicial officer, practically, in the city of New York, is elected, except the magistrate. I believe I have had in the last two years as much experience in the magistrate's court by virtue of my position as district attorney as anybody in the city, and I believe that anything which will improve the judicial system, either in the magistrates' courts, or any other branch of it, should be proposed by one who is conversant with the court. I feel that if these magistrates are elected in New York we will get men who are in closer touch with the people and men who are better qualified; and as the people of New York have been granted the power to elect all other judicial officers, I am at a loss to know why they should not elect the magistrates. I have no fear of politics being injected into these courts. I know from my own experience that those magistrates are seldom annoyed with any so-called politicians. In order to meet the argument that may be interposed in reference to elective magistrates, I want to point out the fact that in their selection to-day there is as much politics as in the selection if they were elected. So, for the reason that I believe that we would secure a better lot of magistrates by electing them, I have proposed this amendment to make the selection of magistrates of Greater New York elective, and it is immaterial to me whether they are elected throughout the whole city or in the respective counties. I think it might be wiser

to have them elected in each county separately, so that they would be in close touch with the needs and wants of the people of the county for which they were elected. For that reason I have offered this proposed amendment.

Mr. Latson — It seems to me that the Committee have thought out this proposition pretty thoroughly and their plan of leaving to the Legislature the duty of determining whether these minor judicial offices shall be appointive or elective seems appropriate, but there is one branch of the matter which I think they have overlooked, and that is that there is one city in the State that is made up of very substantial communities, and that if they had carried their thought along to that distance and applied this same principle that they have embodied in this provision, I should think it would be more consistent. I have, therefore, prepared an amendment which applies to any city in the State which has boroughs — that, of course, would mean only the city of New York — and recognize that those boroughs are communities of such size in themselves that they should have appropriate recognition and the Legislature have power to direct whether the appointment or election should be held in the boroughs as such, rather than in the entire city.

The Chairman — The Secretary will read the amendment.

The Secretary — Page 25, line 25, strike out the italicized word "and" after the last bracket, and insert in place thereof an italicized comma. Page 26, line 3, insert an italicized comma after "state", and insert in italics after "or" the following: "in any boroughs contained within a city or within districts created for that purpose or may be". Page 26, line 4, strike out "thereof", and insert in italics "of the several cities" and enclose with brackets the comma after "manner" and the comma after "powers". Page 26, line 5, enclose with brackets the word "shall" and insert in italics before "be" the word "may".

Mr. Wickersham — Mr. Chairman, I move the question on the various amendments.

Mr. Weed — Mr. Chairman, may I ask the section to be read as it would appear with the amendment offered by Mr. Latson?

Mr. Latson — Mr. Chairman, I will read that, if that may be done in response. I am reading from line 24 on page 25, the last words on line 24: "Justices of the peace and city magistrates and all other judicial officers whose election or appointment is not otherwise provided for in this article may be elected in the several cities of the State and in boroughs contained within a city or within districts created for that purpose or may be appointed by some local authorities of the several cities in such manner and with such powers and for such terms, respectively, as are or may be prescribed by law."

Mr. D. Nicoll — The effect of the amendment would be to enable you to elect magistrates in Brooklyn, provided the Legislature authorized it?

Mr. Latson — That is what I was going to say — the effect of it is to enable the Legislature to deal with this whole question. That is the effect of it.

Mr. D. Nicoll — So that you could go to the Legislature and ask the Legislature to allow you to elect your magistrates in Brooklyn, while in Manhatan, the Bronx, Queens and Richmond, they would be appointed by the mayor. Would that be the effect of it?

Mr. Latson — I think, Mr. Chairman, the answer comes in another branch of the Constitution with reference to our general laws. That is in the home rule provision and you will find there that that subject is treated and the Legislature may not pass laws applicable to one city without making them applicable to all, with reference to such matters. So that the answer to the question presented from Mr. Nicoll comes from another branch of the Constitution.

Mr. D. Nicoll — If the gentleman will yield again, I am not attacking this proposition; I only want to know whether or not we are right in our interpretation of the question.

Mr. Latson — If there were no limitations upon the Legislature to pass special laws, you are right, but if the Legislature is limited in this regard by some other provision of the Constitution, then the answer would be dependent upon that limitation.

Mr. D. Nicoll — If the Legislature is limited by another provision of the Constitution, why attempt to disregard that here?

Mr. Latson — Mr. Chairman, the gentleman seems to have passed out of his mind the difference between local or special and general laws. Now if there were no limitation upon the Constitution as to special laws, the answer would be right, namely, that the Legislature might make one rule for the Borough of Richmond, and another rule for the Borough of Brooklyn, and a rule for Rochester, and another for Buffalo. But if there be a general law on that subject, or if there be a provision in the Constitution compelling the Legislature to deal with such a subject by general laws only, then the treatment would be different.

Mr. D. Nicoll — Is it a fact, Mr. Latson, that the Republican organization in Brooklyn want to elect their magistrates and prefer that method of selecting them?

Mr. Latson — I don't know anything about the attitude of the Republican organization, but I do know that we have had a great deal of trouble over there. I know in the old city of Brooklyn we elected them and we had pretty good men; one or two were finally sent to the Supreme Court. I also know that since they have had

the appointive system we have had to remove three of them. Let me say further to the gentleman, that, so far as I am personally concerned, I regard this as an old, old story, and an old evil, as far back as the days of the old Ivins charter commission. I presented at that time a special report on this very proposition and recommended that throughout the city the magistrates be elected and not appointed because I had brought before me in the work that was presented to that commission evils which it is not worth while for me to speak of here, but which were presented by this undisputed evidence. There is an evil which ought to be corrected, and I am addressing myself to a question which has been heavily on my mind for a number of years.

Mr. Steinbrink — Will Mr. Latson permit me to say to Mr. Nicoll that the Republican organization in the county of Kings, which is the most powerful of our Republican organizations in the State of New York, is desirous —

Mr. D. Nicoll — Don't terrify the Convention!

Mr. Steinbrink — No, merely to emphasize the strength, not to add terror. They are desirous, Mr. Nicoll, of having, if possible, the elective system in Kings again, so that the Legislature may provide that system if it sees fit to do so.

Mr. D. Nicoll — Let me ask you a question. How can a Republican Legislature resist the most powerful organization in the Republican party?

Mr. Steinbrink — Only because we have very strong men in the Legislature. It is really to cure, Mr. Nicoll, two evils; first, the evils that Mr. Latson has pointed out, which have existed in the city of New York in the past, a condition which should not have existed; and, second, in 1900 the Legislature passed precisely such an act, which, in the case of People ex rel. Dooley, was held unconstitutional only because the Constitution used the word "city" and Brooklyn had been swallowed up in the city of Greater New York. That is what it cures.

Mr. Sears — Mr. Latson, do you interpret the words of the amendment as proposed — I mean, without your amendment — to require the election of magistrates if they are to be elected by the electors of the entire city?

Mr. Latson — Yes, as I read the report of the Committee, it was the intention that the Legislature should direct that magistrates should be elected in a given city or that they should be appointed by some local authority in a given city. The only thing I am seeking to do here is to direct attention to the fact that within the city of New York are very great communities, one of two million inhabitants, and another of two and one-half million and the principle which the Judiciary Committee had in mind was that

it ought properly to be applied to those several communities forming the city. That is the only feature.

Mr. Sears — May I ask another question. Your interpretation is that, under the amendment as proposed by the Committee, the city magistrates would have to be elected at large, that is, by the electors of the entire city?

Mr. Latson — That is the way I read it.

Mr. Sears — And the purpose of your amendment in this respect is to allow the magistrates to be elected by districts or boroughs or some division less than the city itself?

Mr. Latson — If the Legislature so desires.

Mr. Wickersham — Mr. Chairman, I ask for the question on the amendments.

Mr. Stimson — I want to say that I sincerely hope this amendment by Mr. Martin will not pass. The proposed amendment seeks to take away from the Legislature what the amendment submitted by the Committee leaves to it. It seeks by constitutional enactment to change the method of choosing police magistrates throughout the city of New York. At present those magistrates are all chosen by appointment by the mayor. This would, by a direct constitutional enactment, completely change that method. Now I feel very strongly, that, in so doing, it would commit a great wrong to the part of the city with which I am familiar, the Borough of Manhattan. When this matter came up in the Committee on the Judiciary, I took occasion to investigate, as closely as I could, the effect which it would have upon those courts. I do not profess myself to have very close experience or acquaintance with them, but I went to the men who I felt were the best qualified to judge of the effect of any such change upon those courts. I have had the privilege of knowing the members of a committee which for several years had had under consideration the inferior courts of New York county who have made a very careful study of that matter and whose disinterestedness is beyond dispute. I also consulted with members of different organizations in New York city who come into contact with those courts in the effort to increase their efficiency as the poor man's court. It must be remembered, Mr. Chairman, that not only do these courts perform an immense bulk of the business of the poorer classes in New York, but they deal with a vast number of citizens who are aliens and have no votes whatever, and who, if the elective system were introduced, would have no choice whatever in regard to their magistrates. Now the opinion of all of those gentlemen was unanimous that, in the borough of Manhattan, in which my investigation was made, this would be about as serious an evil as could be introduced, and their testimony was unanimous against it, so much so that I felt I was

justified in strongly opposing that amendment. I sincerely hope that it does not pass.

Mr. D. Nicoll — May I ask a question? What has the gentleman to say as to the amendment offered by Mr. Latson?

Mr. Stimson — I am very glad to say what I have to say about that. The amendment by Mr. Latson would make this a matter of local autonomy in the different boroughs. I shall oppose that amendment because I was a member of the Committee where the matter was fully discussed and where the contrary conclusion was reached, and that conclusion is in accordance with my own views upon the subject of election or appointment of magistrates in general in city matters. But I think it is fair to say this: In view of the wicked suggestions which have been brought out by my interrogator: there would be this one great advantage from the standpoint of Manhattan borough, in the passage of the Latson amendment, that it might remove the temptation on the part of this powerful Brooklyn Republican organization, of which we have heard, to join hands with the powerful Democratic organization in New York county and produce a change throughout the city which, in my opinion, would be disastrous to these courts.

Mr. Wiggins — I hope this amendment offered by Mr. Latson will prevail. It does two things which are before this Convention; one is the principle of home rule, and if you believe in that and expect to support the home rule amendment, then you should support the Latson amendment which gives the Legislature the right to give this privilege to the boroughs when it chooses to do so. The second reason is that those who believe in the elective system for magistrates or in the elective system for the judiciary should support this amendment which would give the Legislature the right to say that in the city of Brooklyn, or borough of Brooklyn, they may, if they choose, elect the magistrates to be chosen in that borough. I hope the amendment will prevail for those two reasons, if for none other.

Mr. F. Martin — When I proposed the amendment which I did propose I had no thought that it would bring on a political discussion or that Mr. Stimson would see fit to mention politics in reference to it. He says the change of system would be disastrous. I know that it would not. I know it would be the best thing for the city of New York if the system were changed and the magistrates brought down closer to the people instead of sitting on the bench with their robes on them, so far away from the people that they cannot understand their desires. If this system, which Mr. Stimson says is so good, is out of politics, as he has suggested, how is it that in the last few months the brother of a political leader in Manhattan and the son of another political leader less than a year

ago, were selected for the bench? There is as much politics in it one way as there is the other, and when I proposed my amendment I had no thought of politics because I had not in any way entered into the political situation in reference to the magistrates. I regret that politics should be brought into a matter of this kind. I think when we secure magistrates who are in touch with the wants of the people, who are close to the people, then we will come nearer to what the people really desire.

Mr. Weed — Mr. Chairman, it seems to me from what I have heard and my own observations that political motives have about as much play in appointments as they have in the election of judicial officers. I think they certainly have a great influence in both. But in view of the great doubt in recent years that has arisen concerning the system of appointment of police magistrates, I am most heartily in favor of the election of those magistrates and I think there is an additional reason for advocating that system, especially in the appointment of officers of this character. Let the people have the opportunity of scrutinizing the record and the characteristics of the men who are going to administer matters that come so closely to them. They have an opportunity to make a selection between a Republican candidate, and a Democratic candidate or any of the other candidates that may be put up by the several parties; and I am therefore in favor of the idea that is advocated by Mr. Martin and yet I do appreciate that there may be circumstances and conditions in the several cities that would make it wise to leave the subject to the Legislature and while I am heartily in favor of the principle advocated by Mr. Martin, I should vote for the amendment offered by Mr. Latson, as opportunity for election there may be given.

Mr. D. Nicoll — Mr. Chairman, this subject of the appointment or election of city magistrates was a matter very seriously discussed by the Judiciary Committee. As the months of our deliberations went by, we changed our views, first from elective to appointive and back from appointive to elective, and then we finally reached the result which is expressed in the present article, and I think we were influenced to do that, finally, by the very eloquent and determined stand taken before the Committee by my friend, Mr. Stimson, who went so far as to say that he would rather have the budget thrown to the wastebasket than see this appointive system disturbed in the city of New York. Well, I think that on the whole Mr. Stimson is right. It is now twenty years ago since I was the district attorney in the city of New York. But during that period I have remained familiar with the administration of criminal justice in the major and in the minor courts, and I want to say in this presence that on the whole I

think the administration of criminal matters in the magistrates' courts is better to-day than it has been at any time in my recollection, and that is due, I believe, to the fact that we have had a series of very excellent men in the city of New York to whom this power of appointment has been confided. We choose many of our mayors and all our comptrollers in the Greater City from the Borough of Brooklyn and we owe, I think, the excellence of our present system largely to that borough. Now, why should Brooklyn which has held the office of comptroller ever since the Greater City was formed and the office of mayor twice, why should that borough want to be separated from Manhattan simply because it has been disappointed in two or three instances where the magistrates have not met the expectations of the community. I am opposed to the Latson amendment. I hope it will be voted down and I am opposed to it for the same reason that Mr. Stimson was opposed to the whole elective system in the argument before our Committee. I believe it was the entering wedge, and if you break down the bars here you are in danger of breaking them down altogether. What have we done by the amendment reported by the Committee? We have left it where it had to be left, to the Legislature. Just now all the reform elements in the city of New York who certainly are entitled to be listened to by this Convention with respect, are in favor of this appointive system. Ten years from now they may be in favor of the elective system, and why not leave it in the power of the Legislature to change it when they are persuaded that a change would result in bettering administration in the city of New York? But do not let us break it down now, leave it where it is.

Mr. F. Martin — If in ten years from now the people do wish the elective system how can it be secured in the present laws — which you shall insert in the Constitution?

Mr. D. Nicoll — If they wish it?

Mr. F. Martin — Yes; if they wish it in one of the counties in New York City, and —

Mr. D. Nicoll — Why it must not be done. We must have the same rule in all of the boroughs. It is most extraordinary that they are trying to set themselves up separately. We are all parts of one city. You might as well have it in the different wards. Do the counties want to secede? I don't know but that the borough of Manhattan would be glad to have some of them go,— we are now paying almost all of their taxes; Brooklyn, which has this powerful Republican organization, which wants to set up in business for itself, now pays about 20 per cent. of the taxes of the greater city — or 25 per cent., not more than that — while the

burden falls on the borough of Manhattan. But as long as Brooklyn stays with us —

Mr. Latson — Does the gentleman realize that the taxable value of a great deal of the property in the borough of Manhattan, whether office buildings, whether factories, or what-not, is dependent for its rental value upon the great floods of people that come over that bridge and under that river for the purpose of occupying those buildings and giving them a value which results in an enhanced assessed value?

Mr. D. Nicoll — To some extent; but I have no such realization of it as the average Brooklyn man.

Mr. Latson — Will the delegate yield for a question? Does the gentleman not know that if there is the evil of borough sentiment or borough jealousy that that has found its best expression, or its worse expression, depending on the point of view, at all events, its highest development, in Manhattan?

Mr. D. Nicoll — Mr. Chairman, I never knew and I say frankly —and that shows how little of a politician I am — until I came to this Convention that there was any such borough jealousy. I supposed that the borough of Brooklyn which succeeded in annexing itself to the borough of New York and compelling the city of New York to pay seventy-five per cent of the taxes of the greater city, was satisfied with the bargain. And I am greatly surprised that she is so restive under conditions so favorable to her. But still, in all seriousness, I protest against dividing our boroughs up in this way, giving one borough one form of government and another borough another form of government. It seems to me that it would be just as irrational as giving one town one system, and another town another system through the Constitution.

I hope Mr. Latson's amendment and Mr. Martin's amendment will be voted down.

Mr. F. Martin — How long is it since the gentleman had the pleasure of being in a magistrate's court himself?

Mr. D. Nicoll — The last occasion was where I was arraigned and pled guilty of a violation of the automobile law.

Mr. Quigg — Mr. Chairman, I am much pained and distressed at the introduction by Mr. Stimson and Mr. Nicoll of politics into our discussions here. I had supposed that that subject was absolutely removed, and certainly I did not expect to see it brought in by Mr. Stimson and Mr. Nicoll. Mr. Chairman, I believe in elections. I believe in letting the people decide. I do not believe that the government which is best administrated is best. I believe that the government the people want for themselves is best, whether in Mr. Stimson's judgment or Mr. Nicoll's judgment it is good government or not. I thoroughly believe in the elective system, in

the right and province of the people to conduct their own affairs and to vote for their own officials. I shall vote for Mr. Latson's amendment.

The Chairman — The question occurs first on the amendment offered by Judge Stowell.

Mr. Kirby — Mr. Chairman, if you will pardon me for making a suggestion; the matter as concerning the whole State of New York, particularly Greater New York, has received very serious consideration, and we who practice law up in the country want to be a little bit careful about this amendment here relative to the sacred office of justice of the peace. While it furnishes to some of you a little simple amusement, we are interested in this proposition, nevertheless, and we are desirous of knowing the precise effect of some of these proposed amendments in this section that have been offered here. I would like to know what the situation of the Cobb proposal is. I understand that proposal would give the board of supervisors the right to fix the fees of magistrates in criminal cases, Mr. Cobb?

Mr. Cobb — To fix their compensation in criminal cases.

Mr. Kirby — I understand it gives them the right to fix the rules as to vagrant cases, in Section 24, I think, if I am correct in the number, you provide that no judicial officers shall receive any fees whatever. Now the ultimate effect of the proposition as it stands at the present time would be that you would give the board of supervisors the right to fix fees in criminal cases and require the payment of a salary in civil cases?

Mr. Cobb —As to the fees for justices, you would be right, but we anticipate leaving the matter of fees precisely as it is left in Section 24. That would permit the boards of supervisors to fix the compensation of justices in criminal cases, either in the way of fees, or if they should see fit, by substituting salaries. In effect it would leave the whole manner of compensation in criminal cases to the boards of supervisors. Very likely it would not need to be exercised, excepting here and there a case.

Mr. Kirby — I may be stupid, but I don't understand clearly in the civil cases?

Mr. Cobb — In civil cases, the justices would continue to receive their fees as before.

Mr. Kirby — Then you are going to change the phraseology of the subsequent section?

Mr. Cobb — Yes.

Mr. Kirby — Very well.

Mr. Law — Mr. Chairman, may that amendment be read?

The Secretary — Page 25, in lines 19 and 20, after the word "number" in line 19, strike out the word "qualification"; in

line 20, after the word " duties ", strike out the words " and compensation ". In line 20, after the word " qualification ", strike out the comma and insert " and ".

The Chairman — The question occurs on the amendment offered by Judge Stowell. A rising vote is asked for. Those in favor of the amendment will arise. Those opposed will rise. Now the clerk will announce the result.

The Secretary —Ayes, 36. Noes, 25.

The Chairman — The amendment is adopted.

The Chair would like to have on the Record that there were a number of members present not voting. The next is the amendment offered by Mr. Cobb. The Clerk will read.

The Secretary — Line 1, page 25, strike out the comma after the word "classification", and insert the word " and ". Same line, strike out the words " and compensation ". Page 26, line 5, at the end of the sentence, insert " the boards of supervisors or other officials exercising power now vested in such boards may fix the compensation to be paid or allowed to justices of the peace in towns and cities for their services in criminal matters."

The Chairman — The Chair would like to say that Mr. Wiggins offered an amendment to the amendment and the vote first will be upon the amendment offered by Mr. Wiggins that the words " in criminal cases " will be stricken from the Cobb amendment. The question first occurs on that.

Mr. J. S. Phillips — A point of order, Mr. Chairman, that the amendment offered by Mr. Stowell pertained to the same subject included in the Cobb amendment and the Committee of the Whole, having acted upon it, it seems to me the Cobb amendment is not now in order. I may be mistaken about those amendments.

Mr. Cobb — The amendment which I offered first made certain changes in lines 19 and 20 and those are the lines with which Judge Stowell's amendment dealt, and then it is an independent clause as to compensation of justices of the peace. The only difference between the amendment of Judge Stowell and that which I have offered and which has just been read as far as lines 19 and 20 are concerned, is that Judge Stowell's amendment strikes out the word " qualification "; mine only strikes out the word " compensation ".

Mr. Quigg — If your word " compensation " is stricken out, why press that part of your proposition now?

Mr. Cobb — I was going to suggest that probably it would be in order to vote on the latter half of the amendment which is the provision relating to the compensation to justices to be paid by the boards of supervisors in criminal cases.

Mr. J. S. Phillips — Mr. Chairman, it seems to me that that portion of the amendment should surely be stricken out.

Mr. Wickersham — Mr. Chairman, may the clerk read that amendment again?

The Chairman — The Cobb amendment referring to lines 19 and 20 will be read again.

The Secretary — Line 20, page 25, strike out the comma after the word "classification" and insert the word "and". Same line strike out the words "and compensation".

Mr. E. N. Smith — That leaves the word "shall", as I understand it, in, and is not the same as the amendment that Judge Stowell offered.

Mr. Cobb — Of course, we ought to pass on this independent proposition, but in view of the fact that lines 19 and 20 have already been considered by the Committee I will withdraw that portion of the amendment, leaving the Committee to act upon the substitute clause.

Mr. J. S. Phillips — I think the Secretary should read the amendment as it is.

The Chairman — In view of the fact that Mr. Cobb has withdrawn the proposed amendment as to line 20, the Chair does not need to say why the point of order is not well taken. The question now occurs on the amendment offered by Mr. Cobb, which the Clerk will read.

The Secretary — Page 26, line 5, at the end of the sentence, insert "the boards of supervisors or other officials exercising power now vested in such boards may fix the compensation to be paid or allowed to justices of the peace in towns and cities for their services in criminal matters."

The Chairman — Does Mr. Wiggins press his amendment?

Mr. Wiggins — I press it, but in view of the fact that this has apparently been passed upon, I suggest my amendment be voted on after the main question, because it would then simply strike out "in criminal matters", leaving it to the board of supervisors to fix salaries in both civil and criminal matters, and I suggest it be voted on afterwards.

The Chairman — The Chair does not see how that can be done.

Mr. Wiggins — I withdraw it then.

The Chairman — The amendment is withdrawn. The question occurs on Mr. Cobb's amendment, just read. A rising vote is asked for. Those in favor will please rise. Those opposed will rise. The Clerk will announce the result.

The Secretary — Ayes, 30; Noes, 26.

The Chairman — The amendment is adopted. Now, the questions occurs upon the amendment offered by Mr. Martin of the Bronx. A rising vote is asked for. The Clerk will read the amendment again.

The Secretary — Page 26, strike out in line 1 the words "or appointment". In line 3, page 26, strike out the words "or appointed by some local authorities thereof".

The Chairman — The question occurs upon the amendment. Those in favor will please rise. Those opposed will rise. The amendment is lost.

The question now occurs upon the amendment offered by Mr. Latson. Those in favor will rise. Those opposed will rise. The Clerk will announce the result.

The Secretary — Ayes, 38. Noes, 20.

The Chairman — The amendment is carried. The question now occurs upon the adoption of section 19. Those in favor of the adoption will signify by saying Aye. Those opposed, No. The section is adopted.

Mr. Wickersham — If any member desires section 20 to be read, I presume it should be read first. I move that if nobody desires to have it read, it be considered as read.

The Chairman — Is there any objection? There being no objection, it is so ordered. (Section 20 follows:) The court of general sessions in and for the city and county of New York is continued, and from and after the first day of January, one thousand nine hundred and seventeen, it shall have the same jurisdiction and powers throughout the city of New York, under the name of the court of general sessions of the city of New York, as it now possesses within the county of New York. It shall consist of the judges then in office and the judges transferred thereto by this section, all of whom shall continue to be judges of the court of general sessions of the city of New York for the remainder of the terms for which they respectively were elected or appointed. The county courts of Kings, Queens, Richmond and Bronx are abolished from and after the first day of January, one thousand nine hundred and seventeen. The judges of such courts then in office shall for the remainder of the terms for which they were elected or appointed, be judges of the court of general sessions of the city of New York. The successors to the judges who were elected or appointed as judges of the court of general sessions in and for the city and county of New York shall be elected by the electors within the county of New York, and the successors to the judges who were elected or appointed as judges of the county courts of Kings, Queens, Richmond and Bronx, respectively, shall be elected by the electors within each of such respective counties, so that the court of general sessions of the city of New York shall consist of seven judges resident in and elected by the electors within the county of New York, five judges resident in and elected by the electors in the county of Kings, and one judge resident in and

elected by the electors in each of the counties of Queens, Richmond and Bronx.

The Legislature may in its discretion authorize the election of one additional judge to reside in and be chosen by the electors in the county of Bronx. The judges who were elected or appointed as judges of the court of general sessions for the city and county of New York, and the judges elected or appointed as judges of the county court of the counties of Kings, Queens, Richmond and Bronx, shall until the expiration of the term for which they were appointed or elected, be respectively paid by the city, the compensation now fixed by law. The successors of all the judges of the court of general sessions of the city of New York shall be elected as hereinafter provided for a term of fourteen years, and their compensation shall be fixed by the Legislature. The judges of the court of general sessions of the city of New York shall choose one of their own number to be the presiding judge thereof, who shall act as such for a period of five years or until the earlier expiration of his term of office, and who shall be charged with the general administration of the court, and assign the judges to hold the terms thereof, subject to such regulations with respect to the times and places for holding terms of the court as the presiding justices of the appellate divisions of the supreme court in the first and second departments shall from time to time prescribe. The judges shall have power to appoint and remove a clerk, who shall keep his office at a place to be designated by the court. All criminal prosecutions and proceedings on January first, one thousand nine hundred and seventeen, pending in the said county courts shall thereupon be transferred to the court of general sessions of the city of New York for hearing and determination at terms held within the counties in which the same are pending. Until the Legislature shall otherwise provide the clerk of the county court in each of the counties of Kings, Queens, Richmond and Bronx, shall act within his county as clerk of the court of general sessions of the city of New York, and the presiding judge of said court shall make such rules and regulations respecting such clerk's offices and the distribution of the business of the court in the said several counties as from time to time may be expedient.

Mr. Steinbrink — I was about to say, Mr. Chairman, that before I proceed to the duty assigned to me by the Chairman of the Judiciary Committee, as the junior member of that Committee I desire publicly and on the ineffaceable records of this Convention to pay a tribute to Mr. Wickersham to whom not alone I, but I believe this entire Convention, owes a great debt. It was to his indefatigable labor, his genial personality and his patience through the tedious hours of labor of many days and nights that in a large

measure is due the article which was reported by the Judiciary Committee. And now, before I proceed to an explanation of section 20, I offer an amendment which has already been approved by the Chairman of the Judiciary Committee.

The Secretary — By Mr. Steinbrink. Page 28, lines 2 and 3, strike out the words "with respect to the times and places for holding terms of the court." Line 13, before the word "clerk," insert the word "chief."

Mr. Steinbrink — To those who are not familiar with conditions in the City of New York, a short explanation is perhaps in order. The City of New York, as you know, comprises five counties: New York, Kings, Queens, Richmond and Bronx. The counties of Kings, Queens, Richmond and Bronx each has a county court. The county of New York has no county court, but instead has a court of general sessions and a city court. The court of general sessions handles all of the criminal business of New York county, while the city court handles such civil business as is usually handled by a county court, exclusive of equity cases. Now, the object of this amendment is to create in the City of New York a unified system, a system which shall be the same throughout every borough within the greater city. When the Constitution of 1894 was adopted, the city of Greater New York had not yet come into being, and it is for that reason that the Constitutional Convention of that year could not possibly have dealt with this condition. It was on January 1, 1898, that we first had a Greater New York. Now, this amendment extends the jurisdiction of the Court of General Sessions throughout the city, and in order that it may be entirely fair to every judge in office within the greater city affected by this consolidation, and fair also to the organization of those courts, the clerical staff, we have provided that the judges of the County Courts now in office shall continue as judges of the Court of General Sessions for the terms for which they were elected, and at the salaries or compensation they are now receiving, in addition to which we make provision that the clerks now serving in these courts shall remain as clerks of that court, and since there will be one chief over the entire city, probably his office is situated in Manhattan, since it is the larger borough; it provides further that the clerks now acting as clerks of the County Court shall, until the Legislature otherwise provides act as clerks of the new Court of General Sessions within their respective counties. Now, the one change of the word "chief" that is embodied in the amendment is to make it conform to the present statute. The statute now defines the clerk of the county court in Queens and in Kings not as the clerk of the county court, but as the chief clerk of the county court,

in that way distinguishing him from the clerk of the county who serves as clerk of the Supreme Court. And the other amendment which strikes out the words "with respect to the times and places for holding terms of the court," is to allay any fear that may exist in the minds of any of the judges of this court that they are to be sent outside of their respective counties to hold court; in other words, that the judge who is to be a judge of general sessions in and for the county of Queens may know that it is the intent of this section that, while he is a judge of this larger court, he will serve within his own county, unless the presiding justices of the two Appellate Divisions in the first and second departments see fit by reason of pressure of business in another section of the city, or because of illness of a judge, if such a condition arises, they may call upon a judge from one county or borough and ask him or direct him to sit in another part of the city.

Mr. Quigg — In view of the evil ideas that have been suggested to an otherwise innocent mind by Mr. Stimson and Mr. Nicoll, will you let me ask you whether I am to understand that our friends in Brooklyn are willing to have their county judges — designate them how you may — elected by Manhattan?

Mr. Steinbrink — Let me answer it, Mr. Quigg; by just reading to you, if I may, from the provision. Speaking of the successors to the judges of the present Court of General Sessions, page 29, line 9, the end of the line, it provides: "Their successors shall be elected by the electors of the county of New York and shall hold office for ten years"— I beg your pardon. I am reading from the city court provisions, but the same one is embodied with respect to the Court of General Sessions. Page 26, end of line 24, it says: "The successors to the judges who were elected or appointed as judges of the Court of General Sessions in and for the city and county of New York shall be elected by the electors within the county of New York, and the successors to the judges who were elected or appointed as judges of the county courts of Kings, Queens, Richmond and Bronx, respectively, shall be elected by the electors within each of such respective counties." In other words, in this section, we preserve this borough autonomy, or home rule, and we permit the electors resident within the county line to choose the judges within that county. We do not make them elective throughout the entire city, and in that way we create thoroughout the city this great unified court which will deal with all the criminal business, at the same time preserving county autonomy, and preserving all of the machinery of the present county courts, within Kings, Queens, Richmond and the Bronx, and the present machinery of the Court of General Sessions in the city of New York.

Mr. Quigg — Allowing them to sit in any county —

Mr. Steinbrink — If the presiding justices of the two Appellate Divisions see fit. They will elect their own chief judge. He will make the rules for the administration of the court — the way the clerk's office is to be conducted; the assignment of terms, subject, however, to the presiding justices of the two Appellate Divisions. Naturally, the sentiment of each community being that within that community the judge whom they themselves have selected should sit there, he will remain there in the administration of the criminal law, unless an emergency should arise, at which time, under this somewhat elastic and perhaps automatic system, the judges may call from Richmond county, if there is little work there, the judge and tell him to sit temporarily in New York county, or to help out in Queens or any of the other counties. That, in effect, is this proposal.

Mr. F. Martin — Just one moment. There is just one question I would like to ask about that section. I notice that the section provides that the expense shall be a charge against the city of New York. Does that mean that it will be apportioned against each of the five counties of the city of New York, or is the expense to be charged as a city expense?

Mr. Steinbrink — My understanding is, Mr. Martin, with reference to the magistrates or municipal court judges, while primarily it is a city charge, the city, through the board of estimate and apportionment, reapportions it back on the county. If that is so, we have tried to follow exactly the same system with reference to these courts.

Mr. F. Martin — If that be so, there will be no objection; but if that should not be so, there would be a very great objection to the payment of the expenses of these courts.

Mr. Steinbrink — Mr. Martin, I do not think there is any doubt but what it is so. But, even if it were not so, don't let us forget that this court is to serve the entire system; and if, in your county of the Bronx, you should desire the services of judges from other counties, you could very readily have it if you wanted it.

Mr. Wickersham — I desire to offer an amendment on page 28, following line 13, to insert the words "court of General Sessions in and for the city and county of New York and the clerk of the." The point is, Mr. Chairman, that in printing this we inadvertently dropped out the words to which I have called attention here. It simply continues the present clerk until the Legislature deals with the subject.

Mr. Steinbrink — The amendment then, Mr. Chairman, will read as follows: Page 28, commencing with line 13: "Until the

legislature shall otherwise provide the clerk of the court of general sessions in and for the city and county of New York and the chief clerk of the county court in each of the counties of Kings, Queens, Richmond and the Bronx," etc.

Mr. Steinbrink — There is a short phrase inserted. Shall I read it again?

The Secretary — Just the words you are putting in.

Mr. Steinbrink — After the word "the," line 13, page 28, at the end of the line, insert: "court of general sessions in and for the city and county of New York and the chief clerk of the."

The Chairman — You withdraw the other amendment and insert the word "chief"?

Mr. Steinbrink — That is withdrawn.

The Chairman — The question occurs upon the amendment offered by Mr. Steinbrink and just read.

Mr. Wickersham — Mr. Chairman, the first amendment was striking out on page 28, lines 2 and 3, with respect to the times and places of holding court.

The Chairman — The question occurs upon that amendment. Those in favor will signify by saying Aye, opposed, No. It is carried.

Mr. Steinbrink has now withdrawn his amendment to insert the word "chief" before the word "clerk" in line 13. The question now occurs upon the amendment just offered by Mr. Wickersham. The amendment will be read.

The Secretary — Page 28, line 13, after the word "the," insert "court of general sessions in and for the county of New York and the chief clerk of the."

The Chairman — The question occurs upon that amendment. Those in favor will signify by saying Aye, opposed, No. The amendment is adopted. The question now occurs upon the adoption of the section. Those in favor will signify by saying Aye, opposed, No. The section is adopted. Section 21.

Mr. Wickersham — Mr. Chairman, I suggest, as to Section 21, unless someone desires that it be read, as it is before us, that it be considered as read.

Mr. Quigg — If Mr. Steinbrink will explain it, yes.

The Chairman — It will be explained.

Section 21 follows: The city court of the city of New York is continued, and from and after the first day of January, one thousand nine hundred and seventeen, it shall have the same jurisdiction and power throughout the city of New York, under the name of the city of New York, as it now possesses within the county of New York, and also original jurisdiction in actions for

the recovery of money only in which the complaint demands judgment for a sum not exceeding five thousand dollars. It shall consist of the judges then in office who shall continue to be judges of the court for the remainder of the terms for which they respectively were elected or appointed, and the additional judges to be elected as provided in this section. The judges who were elected or appointed as judges of the city court of New York, until the expiration of the terms for which they were respectively elected or appointed, shall be paid the salaries now fixed by law for such judges. Their successors shall be elected by the electors of the county of New York and shall hold office for ten years. There shall also be four additional judges, two of whom shall reside in and be chosen by the electors of the county of Kings, and one of whom shall reside in and be chosen by the electors in each of the counties of Bronx and Queens, all of whom shall be elected at the general election in November, one thousand nine hundred and sixteen, and they and their successors, who shall be chosen in like manner, shall hold office for ten years. The Legislature may in its discretion authorize the election of one additional judge to reside in and be chosen by the electors of the county of Kings. The judges elected as in this section provided shall receive from the city a compensation to be fixed by the Legislature. The judges of the city court of New York shall choose one of their own number to be the presiding judge thereof who shall be charged with the general administration of the court and assign the judges to hold the terms thereof, subject to such regulations with respect to the times and places for holding terms of the court as the presiding justices of the appellate divisions of the Supreme Court in the first and second departments shall from time to time prescribe. The judges shall have power to appoint and remove a clerk, who shall keep his office at a place to be designated by the court. All civil actions or proceedings on January first, one thousand nine hundred and seventeen, pending in the county courts of the counties of Kings, Queens, Richmond and Bronx, respectively, shall thereupon be transferred to the city court of New York for hearing and determination, which court for the purpose only of such hearing and determination and the enforcement of the judgments rendered thereon shall have and exercise the jurisdiction previously vested in the respective county courts from which such cases are so transferred, at terms held within the counties in which the same are pending. Until the Legislature shall otherwise provide, the clerk of the county court in each of the counties of Kings, Queens, Richmond and Bronx, shall act within his county as clerk of the city court of New York, and the presiding judge of the court shall make such rules and regulations respecting the clerks'

offices and the distribution of the business of the court in the said several counties as from time to time may be expedient, subject to regulations of the presiding justices of the first and second departments as aforesaid.

Mr. Steinbrink — Before I proceed to the explanation of Section 21, may I offer some amendments which have been approved by the chairman of the Judiciary Committee and also by Mr. Richards, delegate from Richmond county?

The Secretary — By Mr. Steinbrink. Page 29, line 11, strike out the word "four" and insert in place thereof the word "five." Page 29, line 14, insert a comma after "Bronx" and insert the word "Richmond." Page 29, line 18, after the word "years" insert "Until the legislature shall otherwise provide the judge of the said court chosen in the county of Richmond shall be surrogate of that county. The Legislature may provide for a surrogate for the county of Richmond." Page 30, lines 1 and 2, strike out the words "with respect to the times and places for holding terms of the court." Page 30, line 16, before the word "clerk" insert the word "chief."

Mr. F. Martin — I have an amendment to Section 21 which I wish to offer.

Mr. Steinbrink — Mr. Martin, I think I have the amendment which you have in mind.

Mr. F. Martin — Mr. Chairman, may I ask Mr. Steinbrink a question and that may clear up the situation and do away with the necessity of my offering an amendment.

Mr. Steinbrink — I suggest that we have the amendment read first.

Mr. F. Martin — Well, if it is as long as the last one it would be pretty hard for me to follow it.

The Secretary — By Mr. Steinbrink. Page 30, line 16, add after the line the words "of the city court of the city of New York and the chief clerk."

Mr. Quigg — Where is that?

The Secretary — Page 30, line 16, add after the line the words: "of the city court of the city of New York and the chief clerk."

Mr. Steinbrink — Now, Mr. Chairman, if I may, I will briefly explain the section and these amendments which have been offered.

Mr. F. Martin — I hope Mr. Steinbrink will explain each one of them.

Mr. Steinbrink — I certainly will, Mr. Martin. The object of the entire section is to accomplish with respect to the civil business within the city of New York exactly what we have already accomplished with reference to the criminal business, and in view of the fact that there are no separate civil court judges in the counties

of Kings, Queens, Richmond and Bronx, we must necessarily provide for these judges in this section. Now, in the city of New York there is to-day a city court, which has jurisdiction up to two thousand dollars. The Legislature sought to increase that jurisdiction to five thousand dollars, but the act was held unconstitutional. So here we provide that the jurisdiction of the city court throughout the city of New York shall be five thousand dollars, and we don't confer any equity jurisdiction. Now, in view of the fact that the county court judges in Kings, Queens, Richmond and Bronx, are transferred to the Court of General Sessions and because of the large growth of population in these counties, we have provided — we had provided originally for four city court judges. One of the amendments offered changes that from four to five, and for this reason: Two of those city court judges are to be chosen by the electors within the county of Kings; one by the electors within the county of Queens; one by the electors within the county of Bronx, and the fifth one, which was added after conference with some of the delegates, to the county of Richmond; and you will recall that yesterday we struck from the provision with reference to surrogates a provision for an additional surrogate in Richmond county, and the reason for it is this: We provide here that the city court judge chosen in the Borough of Richmond shall act as surrogate and be surrogate of Richmond county and be surrogate until such time as the Legislature shall otherwise provide.

Mr. Quigg — Are the salaries of these judges to be charged against the city of New York?

Mr. Steinbrink — Against the city of New York and reapportioned — it is reapportioned back, as I understand the system, on the counties from which they are chosen.

Mr. Quigg — So that, at the suggestion, you say, not of the Committee, but of a member or two of the Convention, you have changed your judgment of how many judges are needed from four to five.

Mr. Steinbrink — No.

Mr. Quigg — In order that there may be one in Richmond.

Mr. Steinbrink — No, Mr. Quigg. You miss the point. It is this: If we do not do this, we would have to do one of two things. We would have to leave Richmond county without a surrogate, because we have taken their county judge who is now acting surrogate and put him in the Court of General Sessions, or else we must give them an officer who can act as the surrogate, and so as to save the expense to Richmond county and the city of New York, we have given them this city judge who can be called upon to do duty in any section of the city and who also will be surrogate of

Richmond county, without additional compensation; and the reason for that is, that the pressure of business in Richmond county is not great enough to justify us in giving them a separate surrogate. I have on my desk a letter from the county judge of Richmond county approving this. This has also been submitted, as I said before, to Mr. Richards, who is a delegate from that county; and who also approves of it.

Now, the change that was made with reference to the Court of General Sessions when we struck out the words with respect to the times and places for holding terms of the court is equally true here, so that the judges may feel that primarily they are to serve the county from which they are chosen and are to be called into other counties when the presiding justices of the two Appellate Divisions call upon them to relieve an emergency, and the last change with reference to the clerk of these courts is this: There being no civil court in the counties of Kings, Queens, Richmond and Bronx, we provide that the present chief clerks of these courts shall act as clerks of the new civil courts until the Legislature shall otherwise provide, and it may be that the Legislature will not have to provide that; the clerks may well be able to handle it, but in the city of New York where the pressure of business is really great and where they have now their own chief clerk of the city court, we provide that the organization and machinery for the court shall continue, until the Legislature shall otherwise provide.

Mr. F. Martin — I have offered an amendment here which I hope will appeal to the members of the convention, which amendment proposes that there shall be, if the Legislature shall see fit hereafter to so provide, a second judge in Bronx County. Now, at the present time, there is a provision that the County Court judges may be increased under the law to four in number, but there has never been an increase. We have but one county judge. Now, under this act, we are to get one City Court judge, but there is no provision made to give the county another City Court judge for the next twenty years. We are not anxious for more judges up there but we do want a provision in the constitution which will permit the county to have a second judge, if it becomes necessary to have a second one. There is no doubt but what there will be a large amount of business in that county in the near future. Our civil calendars in the county are already clogged; in fact all civil matters in the Supreme Court to-day in the county of the Bronx, according to the report of the Bar Association, are some four or five years behind. This has been because we have had no Supreme Court judges, and, possibly, because we did not have a court house ready for additional ones, but under this section, we would like to be able to secure a second City Court judge if the business demands

it. I know that the business will demand it in a year or two, and I think it is a fair proposition and one which the members will agree should be adopted.

Mr. Steinbrink — For the Committee, I hope the amendment offered by Mr. Martin will not prevail and I will briefly point out the reason for it: Under the scheme for the Court of General Sessions we have already provided that the Legislature may give to the county of Bronx an additional judge if the increase in criminal business should warrant. Now, the county of Bronx, I understand to-day, has a population of approximately six hundred to six hundred and fifty thousand. I hold in my hand a map which was prepared from records collected by Mr. Westwood, and which gives the amount of civil business handled by the County Courts in the various counties. It discloses that in the county of the Bronx, when this was made up, there were on the calendar approximately 400 civil cases undisposed of, and that at the last term of the County Court they had tried 13 civil cases. Now, don't forget that the very object of this system is to provide a body of judges throughout the city who may be called upon, if necessity requires it, to go into another county or borough to sit and help dispose of the business. Now, you cannot give to the county of the Bronx, with its six hundred thousand population, two city court judges, when from the Judiciary Committee after studying the records and statistics we have reported that Kings county, with a million, eight hundred thousand people, with twelve hundred cases on its calendar, with its civil calendar a year and a half behind — when in Kings county they have sent a thousand cases from their civil calendar to the Municipal Courts to be disposed of — when we have given to that county two City Court judges it certainly would be out of proportion to permit the Legislature to increase the judicial staff of Bronx county; because if need should arise, the authorities of Bronx county have only to request the presiding justices of the two Appellate Divisions to give them relief, and from the body of judges it has in New York county, two in Kings, one in Queens, and one in Richmond, who will not be kept very busy, a body of fourteen judges, you can certainly always find one who will ease the pressure, if pressure exists. We want to keep down the expense. We want to keep down, if we can, the judicial force in New York city. To-day, of various kinds of judges, there are 177 within Greater New York. Now, don't let us increase it any further, or the system will grow over our heads.

Mr. Weed — How many judges in this city court will be chosen by the electors of the borough of Manhattan?

Mr. Steinbrink — I assume, of course, the same number that they have now.

Mr. Weed — And two more?

Mr. Steinbrink — No, oh no. We do not give them additional judges.

Mr. Weed — Then, you select ten from the borough of Manhattan and only two from the borough of Kings?

Mr. Steinbrink — Yes.

Mr. Weed — Then why should the borough of Manhattan have such a preponderance of judges in this court?

Mr. Steinbrink — For this reason, and I say this even though I come from Kings county: New York county is fast becoming the commercial center of the world, and to-day, though its population is only slightly in excess of Kings county, the volume of its litigation is much greater in proportion than the proportion of population, and it is growing greater all the while. It is because of that that we have been compelled, much against our wish, to provide for additional judges in New York county, and the war which is now being carried on has made New York county the commercial center of the world, more so than it was a year or two ago.

Mr. Weed — Why should not the electors of the entire city have an opportunity of selecting a comparatively equal number of judges for the court? The parties who are the litigants don't select the judges. It is the voters in the localities, without reference to where the commerce of the world is centered, who select the judges, who determine controversies which may arise between residents of different counties or countries. I cannot understand why electors of the borough of Manhattan, are any more competent to select judges of this court, than are the electors of Kings, Queens, Bronx and Richmond.

Mr. Steinbrink — It is not a question of the competency of the electors to choose; it is only a question of meeting the business of the courts. The business is within the county of New York. Take, for example, the county of Queens. The calendar had 56 cases in the civil part. At the last term of the county court they tried eight civil cases. Certainly, if that is the amount of business within that county you would not say that it should have the same proportion of judges as Manhattan, merely because it has the population. We are not trying to create a system to meet population but we have tried to create a system to meet the large amount of business in the court.

Mr. Weed — But you provide that these judges shall face this fluidity, so to speak, that they can serve in any county or in any borough and you also provide that the charge is to be against the city at large. Now, if the charge is against the city at large, it does seem to me that the electors of the city at large should have something more to say about the selection of judges in that community. Ought they not?

Mr. Steinbrink — No, Mr. Weed, because I think the question of the charge does not enter, because I would answer that the same as the general sessions proposition.

Mr. Weed — I know.

Mr. Steinbrink — While it is paid out of the city treasury it is reapportioned by the board of estimate and apportionment back into the county.

Mr. Weed — Is there any provision in this Constitution that requires that to be done?

Mr. Steinbrink — There is no provision in the Constitution that requires them to do that with reference to the municipal court judges or the magistrates. That is a matter of administration. It is not a question of constitutional provision. It is a business of the board of estimate and comptroller of the city and it is done now.

Mr. F. Martin — Do you know, as a matter of fact, that the county court to-day is the only criminal court with sessions in the Bronx, and that the judge of that court is compelled to give his entire time, twelve months of the year, to the disposition of jail cases practically in the county, and that he cannot give any time whatever to the civil cases.

Mr. Steinbrink — Mr. Martin, I might sing that same song with reference to Kings.

Mr. F. Martin — Now, ought that to be?

Mr. Steinbrink — But what we ought to do is to create a system which will meet the demands and we did it in the county of the Bronx because we have already provided, and I refer to the general sessions,—

Mr. F. Martin — Well, if you did it on the figures you have given, you are wrong.

Mr. Steinbrink — We have provided that the Legislature may provide an additional general sessions judge in the Bronx.

Mr. F. Martin — That is for criminal purposes.

Mr. Wickersham — Mr. Chairman, I understand that Mr. Griffin's amendment which was proposed authorized the Legislature to appoint in the future, if it is necessary, one additional city court judge, if the Legislature should deem so advisable.

Mr. F. Martin — Yes.

Mr. Wickersham — Mr. Chairman, I have no objection to that. It seems to me that puts it in the hands of the Legislature to meet the growing needs, if they should be insistent.

Mr. Steinbrink — Then, General, why not put a general provision in the city court article or section?

Mr. Wickersham — No.

Mr. Steinbrink — Let me point out to you, Mr. Wickersham, that you are now meeting the precise point that I tried to make

you see in the Judiciary Committee, that you are dealing with a calendar in Kings county which has on it twelve hundred cases, and an additional one thousand cases taken from that calendar and sent into the municipal court, and the litigation one year and a half behind, and in 1910 they were six years behind in their civil work.

Mr. Wickersham — I thought we had considered all of that and met it very adequately, and it seems to me there is no reason for going into that further.

The Chairman — The Chair will hold that the deliberations of the Judiciary Committee are not germane to this discussion.

Mr. Weed — Mr. Chairman, as I understand this provision there is a very large amount of the jurisdiction of the county courts which will not be transferred to city courts. The county courts have considerable equity jurisdiction. They can entertain foreclosure suits; they can entertain lunatic proceedings; and they can entertain infant proceedings, and various others that I cannot now recall, and it is an exceedingly great inconvenience to the residents of the borough of Queens, for whom I speak, that there should be some judge in that neighborhood to whom they could go for relief in those matters, instead of having to go away down to Brooklyn before a justice of the Supreme Court. Now, I appreciate the fact that this section provides that the city court shall possess the jurisdiction now possessed by the county courts for the purpose of disposing of matters of this character in the city court until these proceedings are disposed of. But I would be very glad if some member of the Committee will inform me why this very valuable and convenient equitable jurisdiction should have been taken away from the judges who are to be selected in the several counties. As I have said it saves time and it is a relief, and it is a jurisdiction which is largely exercised, and for the purpose, Mr. Chairman, of getting this question before the Convention, I will offer the following amendment: Page 28, line 26, after the words "New York" insert the following: "Also the jurisdiction now possessed by any county court of any of the counties within the city of New York."

The Chairman —There was an amendment just offered, which perhaps the Chairman of the Judiciary Committee will be interested in.

Mr. Weed — Mr. Chairman, I will repeat it. At page 28, line 26, after the word "New York" insert the following words: "Also the jurisdiction now possessed by any county court of any of the counties within the city of New York." While you were engaged, Mr. Wickersham, I was calling attention to the fact of the great convenience to the residents, certainly in my county,

in having an opportunity of going to a judge in their neighborhood, with their small foreclosure suits, with their infant proceedings, with their lunacy proceedings, and a variety of other equitable jurisdictions which the county courts now possess, and which they are entirely deprived of by the language in this amendment, except those proceedings that are now pending before these county courts.

Mr. Wickersham — The Code of Civil Procedure which confers jurisdiction upon the city court, does give it jurisdiction in a very large number of equity cases. I had the code here, but it has disappeared.

Mr. Weed — Well, it is far less than that conferred upon the county court.

Mr. Wickersham — But in foreclosure cases, in foreclosure of liens, and many others, and, of course, it is not as broad as the county court and in the opinion of our committee it ought not to be.

Mr. Weed — I have heard of no complaint from any quarters as to the exercise of these equity powers by the county court.

Mr. Wickersham — The reason they placed those equity powers in the county courts in the country has been because there was no Supreme Court judge at hand to whom it might be easy to go, but in the city of New York where there are plenty of Supreme Court judges we felt that it ought not to be. That question in a larger aspect was suggested a moment ago by Mr. Latson, who intended to offer an amendment, but at my suggestion he said he would reserve it until after the motion to reconsider on Monday morning, and I said I would make a motion to reconsider at that time and give him an opportunity to bring it up then, and if Mr. Woods will do the same we can consider the two propositions together.

Mr. Weed — Will you please tell me what the scope of the proposal is?

Mr. Latson — Mr. Weed, it is not in. I would have offered it now, except General Wickersham told me what his preference was and I will present it on Monday morning when the order of business seems favorable to General Wickersham, and I will be very glad, Mr. Weed, to sit down with you personally; and General Wickersham has requested me, because of certain business he has in mind this morning, to defer that.

Mr. Weed — Then, if Mr. Wickersham will make a motion to reconsider Monday morning for the purpose of giving me an opportunity to do that, I will withdraw that amendment.

The Chairman — Is the amendment withdrawn, Mr. Weed?

Mr. Weed — Yes, sir; under the suggestion of General Wickersham.

The Chairman — The question occurs on the amendment offered by Mr. Steinbrink. Any one desire to have it read again? Those in favor of adopting the amendment signify by saying Aye. Opposed, No. The amendment is adopted. There is another amendment offered by Mr. Steinbrink with reference to the clerk of the city court of New York city. Those in favor of its adoption will signify by saying Aye. Those opposed, No. The amendment is adopted. Another amendment offered by Mr. Steinbrink. Those in favor of its adoption signify by saying Aye. Those opposed, No. The amendment is adopted. The next in order is an amendment offered by Mr. Martin, which I understand to be —

Mr. F. Martin — That is the amendment as to an additional judge in Bronx county, authorizing the Legislature to provide for it.

The Chairman — The question is on the amendment offered by Mr. Martin. Those in favor of its adoption signify it by saying Aye. Opposed, No. The amendment is adopted.

Mr. Haffen — Mr. Chairman, may I inquire what amendment is being voted on?

The Chairman — The amendment which gives the Legislature the power to provide for another judge in the county of Bronx.

Mr. Haffen — Mr. Chairman, I desire to correct Mr. Steinbrink, in relation to the population of the county of Bronx. The population of Bronx, according to the latest figures received, is 666,737, excluding orphans and those in other institutions which would bring it up to 700,000 about, and within the next twenty years it will be close on to the population of Brooklyn.

The Chairman — Those in favor of the adoption of the section signify by saying Aye. Opposed, No. The section is adopted. The next section. Is there any member desiring to have section 22 read?

Mr. Bockes — Mr. Chairman, I desire to have this amendment read.

The Chairman — If there is no objection, the section will be considered as read. There being no objection, the section is so considered.

(Section 22. Inferior local courts of civil and criminal jurisdiction may be established by the Legislature, but no inferior local court created after the first day of January, one thousand eight hundred and ninety-five, shall be a court of record. Except as herein provided the Legislature shall not hereafter confer upon any inferior or local courts of its creation any equity jurisdiction or any greater jurisdiction in other respects than is conferred upon county courts by or under this article. The Legislature may, however, provide that the territorial jurisdiction of any

inferior local court now existing or hereafter established in any city or village shall extend throughout the county in which such court is located, and also throughout the county in which such court is located, and also throughout such city or village irrespective of town or county lines. The Legislature may also create civil divisions consisting of, not to exceed, three contiguous towns or parts thereof for the purpose of establishing therein inferior local courts, having territorial jurisdiction throughout the county or counties in which said towns are situated. The Legislature may confer upon any inferior or local court power to try without a jury offenses of the grade of misdemeanor. The Legislature may establish children's courts, and courts of domestic relations, as separate courts, or parts of existing courts or courts hereafter to be created, and may confer upon them such equity and other jurisdiction as may be necessary for the correction, protection, guardianship and disposition of delinquent, neglected or dependent minors, and for the punishment and correction of adults responsible for or contributing to such delinquency, neglect or dependency, and of all persons legally chargeable with the support of a wife or children who abandon or neglect to support either. In the exercise of such jurisdiction such courts may hear and determine such causes, with or without a jury, except those involving a felony. Except as in this article otherwise provided, all judicial officers shall be elected or appointed at such times and in such manner as the Legislature may direct.)

The Chairman — The Secretary will read the amendment offered by Mr. Bockes.

The Secretary — Page 31, line 17, strike out the words "without a jury".

Mr. Bockes — Mr. Chairman, I suppose the members of the Committee have given the matter consideration, but looking at it from the standpoint of my own experience it is in the courts of inferior local jurisdiction, if that includes justice of the peace courts, as I assume it does, that there is the most use for trial by jury. It is there that the old original idea of a jury trial is best maintained, and a person is tried among his own peers. Now, if I am wrong in thinking that that applies to justices of the peace, their courts, if I am wrong in that, that it applies to justices of the peace, I would be glad to have it called to my mind right now and I will withdraw the amendment.

Mr. Wickersham — This provision which the gentleman addresses his motion to is one of those measures which in the opinion of the Committee was of more value in improving the administration of justice than almost anything else. It was to provide that the petty cases of misdemeanor, in those cases the

Legislature might empower the court to try and dispose of the cases without a jury, and no other provision, I think, is more earnestly supported by the committee than this provision.

Mr. Marshall — I would like to supplement what Mr. Wickersham has said by calling attention to the fact that this question has been before the Court of Appeals on a number of occasions, and notably in the very important case of the people on the relation of Commerford against Dutcher, in 83 N. Y. page 240, where this whole subject was well considered, and where the importance of such a provision as this was emphasized. It would be a positive misfortune, especially in the cities, if this amendment were carried.

Mr. Brockes — Then I wish to say a few words upon the proposal and in favor of it.

Mr. Quigg — I rise to a point of order.

The Chairman — The gentleman will state his point of order.

Mr. Quigg — I call the Chair's attention to the fact that a quorum is not present to do business.

Mr. Wickersham — Mr. Chairman, if Mr. Quigg will withdraw that point of order, I will move that the Committee rise, report progress and ask leave to sit again.

Mr. Quigg — I withdraw my point of order for that purpose.

Mr. Wickersham — I move, then, sir, that the Committee do now rise, report progress and ask leave to sit again.

The Chairman — The question occurs upon the motion of General Wickersham that the committee do now rise, report progress, and ask leave to sit again. Those in favor will signify by saying Aye, those opposed No. The motion is carried.

(The President resumes his chair.)

The President — The Convention will come to order.

Mr. Wagner — The Committee of the Whole has continued consideration of Special Order No. 61, and begs to report that it has made progress and asks leave to sit again.

The President — The question is on granting leave. All in favor will say Aye, contrary, No. Leave is granted.

Mr. Blauvelt — Mr. President, before adjournment I would like unanimous consent that the Committee of the Whole be discharged from further consideration of Proposed Amendment No. 782 for the purpose of amending as indicated, and that it be reprinted and recommitted.

The President — Is there any objection? Without objection, it is so ordered.

Mr. Wickersham — Mr. President. I fear it is impossible that we should have a quorum after the recess to-day. One of the delegates has already suggested, but at my request has not pressed for the moment, a point of order that there is no quorum. It is

a matter of very deep regret that so many of the delegates have failed to continue here in discussion of one of the most important articles which is presented or to be presented before this Convention. So much has been said by the President and by others respecting the duties of the delegates that I feel that I ought not to add anything to it. But I fear there is no possibility of getting a quorum, and therefore I feel it is hardly fair to those faithful delegates who are here to ask them to come back after recess when we know we will not have a working body. I therefore most reluctantly move that we adjourn until Monday morning.

The President — Mr. Wickersham suggests the absence of a quorum. The Secretary will call the roll.

Upon the call of the roll the following delegates responded:

Messrs. Aiken, Allen, F. C., Bayes, Beach, Bell, Berri, Blauvelt, Bockes, Buxbaum, Clinton, Cobb, Coles, Deyo, Haffen, Hale, Heaton, Hinman, Kirby, Landreth, Latson, Law, Lincoln, Lindsay, Low, McKinney, Martin, L. M., Marshall, Meigs, Nicoll, C., Nicoll, D., Nixon, Parker, Parmenter, Phillips, J. S., Phillips, S. K., Potter, Quigg, Reeves, Rhees, Rodenbeck, Ryder, Sargent, Sears, Sharpe, Sheehan, Slevin, Smith, E. N., Smith, R. B., Standart, Steinbrink, Stimson, Stowell, Tuck, Wagner, Weed, Wickersham, Wiggins, President.

The President — There is not a quorum of the Convention present. What is the pleasure of the Convention?

The President — The hour of one o'clock having arrived, the Convention stands in recess until half-past two o'clock this afternoon. Whereupon, at 1:00 P. M., the Convention took a recess until 2:30 P. M. of the same day.

AFTER RECESS — 2:30 P. M.

The President — The convention will come to order.

Mr. Quigg — I move the Convention do now adjourn.

The President — It is moved that the Convention do now adjourn. The Chair takes the liberty of suggesting that there is not a quorum present. The Clerk will call the roll.

Mr. Quigg — No, Mr. President, I did not suggest that a quorum is not present. I move that the Convention do now adjourn.

The President — The Chair suggests that there is not a quorum present. The Secretary will call the roll.

Upon the call of the roll the following delegates responded: Aiken, Allen, F. C., Beach, Bell, Berri, Blauvelt, Bockes, Bux-

baum, Clinton, Cobb, Coles, Deyo, Green, Haffen, Hale, Heaton, Kirby, Landreth, Latson, Law, Lincoln, Lindsay, Low, McKinney, Martin, L. M., Marshall, Meigs, Nicoll, C., Nicoll, D., Nixon, Parker, Parmenter, Phillips, J. S., Phillips, S. K., Potter, Quigg, Rhees, Rodenbeck, Sargent, Sears, Sharpe, Sheehan, Slevin, Smith, E. N., Smith, R. B., Standart, Steinbrink, Stimson, Stowell, Tuck, Wagner, Weed, Wickersham, Young, C. H., President.

The President — Fifty-four members of the Convention are present, not a quorum.

Mr. Quigg — I move that the Convention do now adjourn.

The President — It is moved that the Convention do now adjourn. All in favor will say Aye, contrary, No. The noes appear to have it.

Mr. Quigg — I ask for a division.

The President — All in favor of adjournment will rise and remain standing until counted.

The gentlemen will be seated.

Those opposed will rise.

The motion is lost.

Mr. Haffen — I would respectfully ask for the interpretation of rule 61, on the bottom of page 24 of the Rules of the Constitutional Convention, 1915.

The President — The gentleman's question is a little general. What is the question?

Mr. Haffen — The question is this, Mr. President: Rule 61 says, "A majority of the Convention shall constitute a quorum. In all cases of the absence of members during its session, the members present shall take such measures as they shall deem necessary to secure the presence of absentees and may inflict such censure or pecuniary penalty as they may deem just on those who, on being called on for that purpose, shall not render sufficient excuse for their absence." Now, what I want to ask is this; does the following: "No constitutional amendment shall be adopted unless by the assent of a majority of all of the members elected to the Convention," affect that which has preceded?

The President — The Chair does not think that is a parliamentary question.

Mr. Haffen — The reason why I raise that point, Mr. President, is because those who are present here, who are faithful in attending the Convention, should not be punished for those who are absent. If we are to punish any one we should punish those who are absent and not those who are present. That is the reason I ask that question.

Mr. Wickersham — Has the gentleman a motion to make?

Mr. Haffen — I simply want an interpretation of this before I make a motion, as to whether that latter part is related to the

former. It says: "No constitutional amendment shall be adopted unless by the assent of a majority of all the members elected to the convention." I want to know whether on Monday or Tuesday the Convention may upset any action, or reverse any action that may be taken here, in case a penalty is placed upon the absentees. That is the question.

The President — There can hardly be a practical situation of that character, because in the absence of a quorum, the Convention can do nothing except to take steps to procure the attendance of absentees or to adjourn.

Mr. Haffen — I move then, Mr. President, that we adjourn.

The President — All in favor will say Aye. Contrary, No. The noes have it and the motion is lost.

Mr. Haffen — Then, Mr. President, may I ask this? "A majority of the Convention shall constitute a quorum. In all cases of the absence of members during its session, the members present shall take such measures as they shall deem necessary to secure the presence of absentees and may inflict such censure or pecuniary penalty as they may deem just on those who, on being called on for that purpose, shall not render sufficient excuse for their absence." It does not call for a quorum in cases of that kind; those who are present may inflict a penalty upon those who are absent. A quorum not being present, those who are present may inflict a penalty upon those who are absent, according to the construction of the language.

Mr. Quigg — Mr. President, I move that such members of the Committee on Rules as are present in the Chamber now shall be deputed to go to all the places where absent members reside and arrest them and fetch them here.

The President — The motion cannot be entertained.

Mr. Wagner — Mr. President, I would like to ask a question for information. Will that include transportation?

Mr. Quigg — No, at their own expense, I add.

Mr. Haffen — I haven't as yet, Mr. President, had the interpretation of that. What does the President say, whether we have the authority to inflict this penalty upon those who are absent or not? That is the question.

Mr. Deyo — Mr. President, I move to amend Mr. Quigg's motion by striking out reference to the Committee on Rules who are present and substituting "Mr. Quigg" in place thereof.

Mr. Quigg — On that, Mr. President, I want to say a word. Now it is perfectly apparent every Saturday, every Friday, we have been in session, that it is impossible to get a quorum here to do business even on Fridays, not to say Saturdays. We might go on with the discussions on Fridays and Saturday morning, but

every member of this Convention, Mr. President, has a right to go home and read his mail and do some ordering of his household once a week. If the Committee on Rules would bring in a rule that would let us get away at one o'clock on Saturday, we could at least read our mail and speak to our wives and children and tell them what to do the next week. But with this order, which will not be obeyed, it seem to me that the Committee on Rules is acting foolishly and obstinately in holding on to it. Now if you are going to have a rule and you are going to adopt it, which leaves the matter to the conscience of one member, then, Mr. President and gentlemen of the Convention, my conscience is going to exercise itself on the rule. Either change the rule or I shall do my duty as I see it.

Mr. Wickersham — I think probably we have no quorum present this afternoon. We have made substantial progress in the discussion of the article. Mr. Quigg yielded to the suggestion of those about him, myself and others, this morning in not raising the point of no quorum. It is extremely important that we should finish our work. Remember, all of those who are greatly interested in the subject before the Committee of the Whole were here, a larger part of them, we were making substantial progress, and, had we not been interfered with by the suggestion of no quorum, we would probably now have been well on towards the end of the article. Mr. Quigg, however, exercising his right as a delegate, chose to raise the point of no quorum.

Mr. Quigg — The Chair raised the point of no quorum; I did not.

Mr. Wickersham — I beg your pardon.

Mr. Quigg — I moved to adjourn.

Mr. Wickersham — You raised the point before recess in the Committee of the Whole?

Mr. Quigg — I withdrew that.

Mr. Wickersham —At my suggestion, Mr. Quigg withdrew that in order that I might move that the committee rise and report progress. I would not have made the motion had he not have made the suggestion of no quorum, or had I not known that you were not going to raise it. Now, this does not advance the business of the Convention. Mr. Quigg knows, as every person having legislative experience knows, that by far the greater part of the constructive work of legislation in all legislative bodies is done without the presence of a quorum.

Mr. Quigg — No; I don't know that.

Mr. Wickersham — It is the universal rule in every deliberative assembly in the civilized world, and we have made some of the most important advances in our work in this body without

having a quorum at any time present; but the delegate chooses to make that suggestion — of course, it is his right, but I suggest to him that it does not advance the interests of the Convention, and I am sure that the view of the delegates present is that if we are allowed to, we can go on and perfect this bill and bring it in on third reading and thus be nearer to the time when we must finish our work. Mr. President, I suggest that the roll be called again. Some of the members may have come in. I suggest that the list of absentees be called. Some of the members may have come into the Chamber.

The President — The list of absentees will be called.

Mr. Wickersham — Mr. President, the combined effect of the absence of so large a number of members, and Mr. Quigg's objection to proceeding without a quorum, makes it necessary to move to adjourn at present, but it also makes it necessary, will make it necessary, that the Rules Committee shall be asked to bring in a rule limiting the debate next week so as to make it possible to finish the work which is before us. I now move that we adjourn.

The President — The motion has been made that we do now adjourn. Those in favor will say Aye. Those opposed, No. The Ayes have it and the Convention stands adjourned until 10 o'clock Monday morning. Whereupon at 2:55 P. M., the Convention adjourned to meet at 10 A. M., Monday, August 23, 1915.

MONDAY, AUGUST 23, 1915.

The President — The Convention will please be in order. Prayer will be offered by the Rev. John Bulmes.

The Rev. Mr. Bulmes — Let us pray. Almighty God, our Heavenly Father, we come again at the beginning of this week. We come, Father, because we realize that we have no one else to go to but Thee, so we ask that Thou wilt guide us and direct us, that Thou wilt bless every man assembled here to-day in regard to this important business. Father, we thank Thee because Thou hast confidence in man and Thou hast entrusted great things into the hands of man, so we pray Thee that Thou wilt bless this Convention. Father, help them to remember that Thou art the One Who gives us self-control, splendid judgment and especially that love that helps us to be strong, to forbear and to be patient. Bless each one, oh, Father. Bless their homes. Many of them come from a distance, and, Father, after all, we realize that our interests are centered in the home as well as in the affairs of the nation. Bless each member; keep them, Father, as in the hollow of Thy hand;

help them to realize more and more that each one of them is to be controlled by Thee. And again, Father, we do not pray only for this State and this Convention, but we want to ask Thee to bless us as a people, and as a nation. Bless the President and his advisers. Bless us, oh, God, in this way, that our nation may be kept as in the hollow of Thy hand, that we may steer away from all shoals of difficulties that are so great at this particular time. Bless, Father, again, this Convention, and help him who is the leader; grant, oh, God, that he may be very judicious and that he may have strength. All these mercies we ask in the name of our Redeemer, Whom we believe in, Jesus Christ. Amen.

The President — Are there any amendments to be proposed to the Journal as printed and distributed? There being no amendments proposed, the Journal stands approved as printed. Presentation of memorials and petitions. Communications from the Governor and other State officers. Notices, motions and resolutions. The Secretary will call the roll of districts.

The President — Reports of standing committees. Reports of select committees. Is there objection to dispensing with the order of third reading?

Mr. Wickersham — Mr. President, I move that the order of third reading be dispensed with.

The President — Unfinished business of general orders. Special orders. The Convention will go into Committee of the Whole to continue consideration of the special order of the day: the Judiciary Article. Mr. Wagner will resume the Chair.

The Chairman — The Committee will resume consideration of Special Order No. 61, Section 22.

Mr. Wickersham — When the Committee rose on Saturday it had under consideration Section 22.

The Chairman — One amendment pending, I believe.

Mr. Wickersham — There was an amendment offered by Mr. Bockes pending. The amendment was on page 31, line 17.

The Chairman — The Clerk will read the amendment again for the information of the Committee.

The Secretary — Page 31, line 17, strike out the words "without a jury".

The Chairman — Any further amendments to that section?

Mr. Wickersham — Mr. Chairman, I move to strike out the word "or" on page 31, line 4, also page 31, line 16. In each case that word "or" comes between the words "inferior" and "local". I think it should be "inferior local" and not "inferior or local". There is somewhat of a confusion in the existing provision. It clearly should be "inferior local". I move the adoption of that section.

Mr. Kirby — You move Section 22 in its entirety?

Mr. Wickersham — Yes.

Mr. Kirby — I simply want to inquire the extent of this provision: "The Legislature may establish children's courts and courts of domestic relations, as separate courts, or parts of existing courts or courts hereafter to be created, and may confer upon them such equity and other jurisdiction as may be necessary for the correction, protection, guardianship and disposition of delinquent, neglected or dependent minors." Now is it the intention that in the case of dependents such equity powers will be conferred upon a local court so that the right to the custody of a child may be permanently taken away from its parents, in case of dependency, destroying the parental relation?

Mr. Wickersham — It is, for the time being. It is to enable these children's courts to deal with delinquent and dependent children, not as criminals but as wards of the State. It is in the exercise of a jurisdiction which has grown up of late years and has been conducted with such success in the well-being and upbringing of children that it has met with the approbation of almost all of those who have studied the subject. Judge Clearwater, who introduced the provision embodied in this section, is prepared to make a statement regarding it and I ask him to answer your question.

Mr. Kirby — What I am interested in particularly is the proposition on the face of it. Assuming, as a matter of fact, that by misfortune my children became dependents, under such jurisdiction as is contemplated to be conferred by this section, some court upon which was conferred equity jurisdiction would have the right to take those children away from me absolutely. I want to know whether or not the relation existing between the children and myself, so far as my legal control in the future, could be ended forever; in other words, whether it is intended to place the jurisdiction or power in some court absolutely to destroy or take away the parental jurisdiction in cases of dependent or delinquent children?

Mr. Wickersham — No, certainly not; any more than the existing chancery power vested in the chancery courts or the Supreme Court on the equity side or the Surrogate's Court which can deal with the appointment of a guardian, can now change the existing relation.

Mr. Kirby — I understand that very well, but I want to know whether this amendment is intended to go farther and have a greater effect than at the present time is provided or whether it is simply temporary for temporary purposes. I do not want to support any proposition which, in effect, gives any court power absolutely to destroy the relation between parent and child.

Mr. Wickersham — Of course, there is no such intention but, as I say, Judge Clearwater is very much interested in this subject and I will ask him to make a statement as to the purpose and effect of this provision.

Mr. Clearwater — First, answering so much of Mr. Kirby's question as relates to the possible destruction of the parental relation between parent and child, let me say there is no such intention. The amendment was not framed with any sort of notion of the remotest character to bring about any such result. It is a part of the enlightened jurisprudence of almost every civilized State to-day, to treat children delinquents not as guilty of crime but as guilty of those trifling transgressions due in part to inherited tendencies, due in part to that exuberant vitality which is so charming and sometimes so mischievous a characteristic of the young. Of late years, beginning, due to the action of the Legislature of the State of Illinois, in instituting a children's court in the city of Chicago, of which that great jurist now on the Federal bench, Judge Mack, became so distinguished a judge and did so much good, other States have followed in creating these children's courts, and so beneficent has been their action wherever formed, that informally in this State, without statutory warrant, without constitutional provision, children's courts have been formed in most of the large cities and in several of the small cities of New York, for instance, a children's court has recently been organized in New York with Judge Hoyt at its head; one has been organized in Buffalo; one has been organized in Syracuse, and one has been organized in Rochester, and since this Convention has been in session one has been organized in this city of Albany.

Now, those courts proceed upon the assumption that a child does not form criminal intent, that these peccadillos which in an adult — or these acts, rather, which in an adult would be a violation of the Penal Law, is, in the child, very much less than that. Therefore, after a very careful consideration, with the entire approval of the Probation Commission of this State, and with the approval of the judges of practically all of the courts, with the very earnest endorsement of the district attorney of New York city, Mr. Perkins, who came here especially to advocate this before the committee, which reported this amendment favorably, this amendment has been reported. Now, as to the equity jurisdiction regarding which Mr. Kirby inquires, and has some misgivings. It is an unusual thing, of course, to confer upon courts of inferior jurisdiction equity power. Prior to the reform of procedure in England, the power was reserved to the Court of Chancery. Mr. Kirby knows perfectly well that even up to this date in this State

all children are wards of the Supreme Court. Prior to the abolition of the Court of Chancery they were wards in chancery, and without the consent of the chancellor, the Court of Chancery, nothing could be done relative to their property, nor can it be done to-day without the consent of some court of record. A child's property cannot be disposed of without the consent either of the Supreme Court or of the county court, which is vested with special powers in those cases. But this situation has arisen in our modern life. It is said by ethnologists and scientists that man is polygamous of natural tendency and it turns out that in our great cities many men neglect their wives and their children and devote their earnings and their attentions in polygamous directions. That, sir, is against the law, but it is not possible for the people who are poor, who are destitute of means and of influence to seize or take the earnings of the father, or the husband, for the benefit of the wife or the child. Whenever a man indulges in the pursuit of pleasure and improperly spends his money, it is the main intent of this provision in conferring equity power upon these domestic relations courts, or these courts of juvenile delinquents, to take such steps by injunction and by order of the courts, to take, or to seize, or to direct the earnings of the father to the support of the mother and the children. It is not always to convict him of crime and blast his opportunity for a livelihood, but it is far more efficacious in other states to direct, by order of a court with equity jurisdiction that he devote a certain proportion of his earnings to the support of his wife and children, and, if he fails to do that, then punish him as for contempt of court and take that portion of his earnings which the court thinks should be devoted to the support of his wife and children.

That is the sole intent, I should say to Mr. Kirby, that is the sole thought in the minds of the framers of this amendment. Now, Mr. Kirby must know and a moment's reflection will satisfy him, that it is also the tendency of enlightened and modern jurisprudence to preserve the parental relation. It is recognized by all humanitarians, by all rightminded men and women that the very best guardian for a child is its mother or its father. Also it is recognized, for we must admit the facts which stare us in the face, that the father very frequently, too frequently, sir, is delinquent in his duty. Now it is not the intent to disturb the parental relation, but it is the very object of this amendment to preserve it and to continue it and to foster it. Bring the delinquent and recalcitrant one to the proper sense of duty by the velvet hand, if it can be done, but by the stern arm of the law if that should be necessary. As to the constitution of the Court, I might say a word. In some cities perhaps it will be necessary to establish a distinct court, although

it was the belief of the Committee, the belief of the judges of the Appellate Division, of the courts of inferior jurisdiction themselves, courts could be created as the amendment expressly and specifically provides out of the existing courts, so that no additional expense would be incurred. And that has been done, as I said a moment ago in Albany, and in all these great cities of New York. But recently in this city of Albany where a remarkable welfare commission, children's welfare commission was appointed by the County Judge, and in the city of New York where Mayor Mitchel has appointed a superb committee of men and women to overlook the proceedings of this children's court, over which Judge White presides. It is provided in this amendment that cases of misdemeanor, ordinary cases of misdemeanor, can be tried by the court without a jury, for the reason that they should not be tried before a gaping crowd. They should be tried as they are being tried all over this country, in a kindly spirit, with a kindly judge upon the bench, persons of kindly disposition watching the proceedings of the court, trying to temper, not precisely the wind to the shorn lamb, but the wind to the destitute and forsaken and abandoned wife and child, and nothing could be further from the intent than to break up the parental relation in a cruel manner as very frequently has been done by various institutions with philanthropic intent, but the precise idea is just exactly that, sir; of course every delegate here knows that heretofore in the past many philanthropic institutions have acted, I regret extremely to say, if not heartlessly, at least unfeelingly in separating parents and children, but I want to strongly impress upon the delegates of this Convention the object of this amendment specifically is to foster and retain that relation and not break it up.

Mr. Kirby — Mr. Chairman, it is precisely the proposition that Judge Clearwater has just referred to that I am interested in, the fact that sometimes children are deprived of the society of their parents, in taking them away from the custody of their parents by zealous and well-meaning people. That is the very proposition I am interested in, the children of unfortunate parents. I am in full sympathy with all you have said in relation to the delinquent children. It is these delinquent children I have in mind. That is the reason I made the inquiry. The children of unfortunate parents become public charges. It is furthest from the thought of the Committee to confer equity powers on any court exerting judicial powers on anybody which would absolutely destroy the parental relation.

Mr. Clearwater — That is absolutely so, and I should have said, in speaking of delinquents, I should have included dependent

children particularly. In the zeal of advocacy I forgot, in the hurried pressure, I forgot, to say that the amendment was intended equally to provide for dependent children. In fact, the whole tenor of my remarks indicated that. And I really, since the time of my first appointment by Governor Hughes on the Probation Commission of this State, reappointed by him and still retained, I have been very greatly impressed with the work of these informal children's courts in the various parts of the State. But they need constitutional recognition, because the time will come when busybodies will interfere with them, and we want to prevent the interference by these — I ought not to say so harsh a term perhaps as meddlesome, but by these philanthropists who have notions differing from those which should control the act of the court.

Mr. Kirby.— I agree with you, Judge Clearwater; as I understand you it is not intended by this Proposed Amendment to confer any greater powers than are already conferred upon the children's court, and to continue the same work —

Mr. Clearwater — Not to confer greater powers than they now exercise but to clothe them with the legal powers which they now exercise.

Mr. Stowell — Mr. Chairman, I desire to ask one question: Judge Clearwater, in what sense is the word "dependent" to be understood in lines 23 and 25? Now is it to be used, or to be considered, as dependent in the broadest sense? That is, as all are dependent on adults, or is this to be used as you understand it, this word "dependent" on the public charities?

Mr. Clearwater — The word "dependent" there is used in its broadest sense to mean those who are destitute of means to sustain themselves, or in any way dependent, or who would become dependent upon the State or upon any civil or municipal division. Of course as you very justly say all children are dependent upon adults, that is a state of nature. This is intended to cover the vast number of cases, of which I have spoken. This is intended to meet the cases where they need financial help.

Mr. Stowell — Well, Mr. Chairman, with that understanding of the word "dependent" does not this provision give a very dangerous power to these courts? It will in effect permit the courts to go into any family, and, if, in the judgment of the court, the child is not receiving the proper religious training, or education, then he may be taken away from the parents.

Mr. Clearwater — Oh, no.

Mr. Stowell — Well, I gather that from your remarks.

Mr. Clearwater — Nothing could be further from the purpose of the amendment than anything of this character. Do you think,

sir, that a court of equity would do anything of that kind? Does my distinguished friend, Judge Stowell, think that a court of equity, subject to review by a superior court, would do anything that would interfere with the religious education of a child under the laws of this State? Why, any judge who would do that should be impeached.

Mr. Stowell — I fully agree with those sentiments, Judge Clearwater.

Mr. Clearwater — No such power is conferred, sir. It is a broad provision, not a meddlesome, pestiferous provision, Judge Stowell.

Mr. Marshall — Mr. Chairman, Mr. Bockes made a motion on Saturday to strike out from page 31, parts of lines 16 and 18 I think, and after the Convention adjourned he discussed the subject with me, and I presented to him certain facts and reasons for this clause which met with his entire approval; and in view of the fact that he and others have raised the question, he requested me to briefly repeat here what I have said to him. He was of the opinion that this provision was an interference with Article I, section 2, with regard to the inviolability of the right of trial by jury and thought this was an innovation in the law. I called his attention to the fact however that Article VI, Section 23, of the present Constitution and Article VI, Section 26, of the previous Constitution contained provisions which had been interpreted by the Court of Appeals exactly as in the terms of the clauses which are inserted on page 31 and which are now the subject of discussion, and briefly the argument as set forth in the opinion of Judge Miller in the case of Comaford against Dutcher, which I cited last Saturday, indicates what the line of reasoning of the court is. The section that was under consideration was Section 23 of Article 6, which can also be found in our present draft of the Constitution as Section 27, on page 33, but, in view of the fact that Section 23 merely dealt with the court of special sessions and we are now dealing in Section 22 with inferior local courts, it would seem desirable to have the same principle clearly set forth in Section 22. Now, in the case which I have just referred to, Judge Miller said: "It is claimed that the act cited"— which was an act passed in regard to trials in courts of special sessions, with the exception of the city of Albany, and other places — "is in conflict with Section 2 of Article 1 of the Constitution, which declares that 'the trial by jury, in all cases which it has heretofore been used, shall remain inviolate forever.' The trial by jury referred to evidently means a trial by a common-law jury of twelve men, within the principle laid down by the decisions of the courts of this State in Hill v. The People (20 N. Y. 363), and

Wynehamer v. The People (13 id. 378). Such was no doubt the law prior to the amendment of Section 26 of Article 6 of the Constitution, which declares that 'Courts of Special Sessions shall have such jurisdiction of offenses of the grade of misdemeanor as may be provided by law.' Prior to this amendment the statute cited, so far as it confers exclusive jurisdiction, would be a violation of Section 2 of Article 1 of the Constitution, and the amendment of Section 26 of Article 6 was no doubt designed to invest the Legislature with authority to confer upon courts of special sessions full and exclusive jurisdiction in this class of cases which it was held not to possess under the decisions of the courts; and it must be regarded as a modification and a restriction of the limitation of power which was held to exist by virtue of Section 2 of Article 1, in respect to offenses of the character specified. The act of 1879 was passed in conformity with the amendment referred to, and petit larceny is an offense of the same grade as a misdemeanor within its terms and embraced within its spirit and meaning." Further on, the Court says: "We think the amendment cited, and the provision as to the right to a jury trial are entirely harmonious, and when the Constitution conferred authority upon courts of special sessions to try misdemeanors, it meant the courts in question, as they were and might be constituted by the Legislature, whether they authorized a jury of six or otherwise. The provision of the Constitution as to a jury trial can have full scope and force by applying it to cases where trials are had in a court of record, while the amendment can apply to cases of a lower grade where the offense is not a felony. Both provisions are thus made entirely harmonious, and if it was intended that the courts of special sessions to which jurisdiction was given should be such as had authority to summon and impanel a common-law jury, it is but reasonable to suppose that such a provision would have been inserted in the amendment. The evident purpose of the act was to relieve the higher courts from the burden of trying trivial offenses, and to leave this class of cases to local magistrates in the vicinity where the offense was committed." Without going further into the opinion, the reason which was stated there as the reason for this provision is a correct one and the system has worked out very satisfactorily because it is very evident that if common law trial by jury were to exist in cases of misdemeanors, it would be practically impossible in our large cities to keep pace with the accumulation of business and the result would be that many an offender would go unwhipped of justice, and, in many instances,— yes, in most instances,— the public welfare would suffer immeasurably. It is therefore hoped by the Committee that this provision will be adopted as it stands. I merely desire once more to call

attention to the fact that this is not an innovation but is merely a continuance of a policy which has been in successful operation since 1869.

Mr. Wickersham — I understand that Mr. Bockes is not insistent on his amendment.

Mr. Marshall — Mr. Bockes has stated to me, that, in view of this explanation, it is entirely satisfactory to him and he had no desire to press his amendment. I cannot withdraw it for him, however.

The Chairman — The question occurs on the amendment offered by Mr. Bockes. Mr. Bockes is not present but I understand that Mr. Marshall —

Mr. Marshall —As I have said, while he did not direct me to withdraw the amendment, he stated to me that he was entirely satisfied that it should not be adopted.

Mr. Stowell — May I ask Mr. Marshall if the precise point in the decision which he has just cited is not that, in courts of special sessions, they were not or are not now entitled to common law jury trial; and, is it not true that, in courts of special sessions, and by that I mean the courts which have jurisdiction of crimes of the grade of misdemeanors, they are entitled to a jury of six?

Mr. Marshall — Not absolutely. There is no constitutional right to trial by jury in those cases, any more than there is a right to be presented by an indictment. In fact, the present provision as to indictment is as to cases which are infamous in their nature and the idea was, while the Legislature had the right to permit trial by jury of twelve or by a jury of six, or otherwise, as is indicated in this decision, that is, without a jury at all, the whole subject is left to the Legislature. This provision merely empowers the Legislature to carry out that policy, permitting these cases to be tried without a jury if the Legislature sees fit to declare that they shall be tried without a jury.

Mr. Stowell — My own experience in criminal matters is this: That perhaps not one case in twenty-five of the grade of misdemeanors is tried by a jury; but there are cases, and some cases that go right to the liberties of the people, where the right of trial by jury ought to be preserved, and I do not think it is a wise provision to incorporate in this Constitution that the Legislature may permit trials of misdemeanors by a magistrate without a jury. It is not so practiced now, and it ought not to be permitted to be practiced in the future.

Mr. Mereness — May I have the amendment read again?

The Chairman — Yes. The Clerk will read the amendment again.

The Secretary — Page 31, line 17, strike out the words "without a jury," after the word "court."

The Chairman — The question occurs upon the adoption of the amendment offered by Mr. Bockes. Those in favor signify by saying Aye. Opposed, No. The amendment is lost. The question now occurs upon the amendment offered by General Wickersham. The Clerk will read the amendment.

The Secretary — Strike out the word "or" on line 4 and line 16.

The Chairman — Those in favor of the adoption of the amendment signify by saying Aye. Opposed, No. The motion is adopted.

Mr. Wiggins — I desire to offer an amendment to which I think there will be no objection by the Chairman of the Judiciary Committee. I have conferred with him about it, and it provides that the jurisdiction of all the services of processes in justices of the peace courts in cities shall be the same as that in justices of the peace courts in towns; that is, the Legislature may direct that the jurisdiction shall be coextensive with the county, if, in its judgment, it feels that that should be permitted.

The Chairman — The Clerk will read the amendment.

The Secretary — Page 31, line 8, after the word "court" insert the words "justices of the peace in cities."

Mr. Wickersham — I think that that is unobjectionable. It is probably included already in the words, but it makes it a little clearer.

Mr. Marshall — I think that is entirely superfluous, Mr. Chairman.

Mr. Wickersham — Mr. Chairman, I thought so too, but Mr. Wiggins felt that justices of the peace are not to be courts within the meaning of the words "of inferior local courts" and for that reason, he wanted it included.

Mr. Wiggins — The courts have held under the previous section which was just adopted,— under former section 17, which is found on page 25, the courts have held that the jurisdiction of a justice of the peace in the city was not the same as that of the jurisdiction of a justice of the peace in a town. In a town, the justice of the peace may issue his mandate, and it may be served anywhere within the county, and may extend into the city, but a justice of the peace in the city may issue his mandate or summons and it can only be served within the boundary of the city, within the city limits. Now, it was intended by the Judiciary Committee to rectify that error, so that all justices of the peace courts in the county should be the same. I spoke to Mr. Wickersham about it, and he thought possibly perhaps it had been done, but upon conferring with Judge Rodenbeck he told me that the point

made was correct; that the section which is now under consideration was not broad enough to permit the language to apply to justice of the peace courts in cities. That was in keeping with the thought which I had upon the subject, and in keeping with the decisions, and for that reason I presented to him an amendment which was probably prolix, and he suggested the adoption of these words, and having confidence in his draftmanship, I suggested the amendment to follow the idea which he had given with respect to the use of these four words in this provision in order that it might be applicable to the previous provisions of the old section 17.

Mr. Marshall — I do not think we ought, in making a Constitution, to put in unnecessary words. If these justices of the peace which are referred to are justices of the peace in the constitutional sense of the word, then they necessarily have a territorial jurisdiction over the whole county.

Mr. Wiggins — Justices of the peace in cities are not constitutional officers.

Mr. Marshall — If they are not constitutional officers then they are inferior local courts, and if they are inferior local courts then this gives them the territorial jurisdiction. By specifying you are weakening. By specifying words of inclusion, you are weakening the universality of the language which has here been accepted as dealing with inferior local courts.

Mr. Wickersham — There is a decision, I don't recall it at the moment, that a justice of the peace is not a court, and it is with that idea in mind that Mr. Wiggins made his suggestion.

Mr. Marshall — But, justices of the peace are dealt with in another section, and justices of the peace from time immemorial have had jurisdiction coextensive with the boundaries of the county. Therefore, they have this very territorial jurisdiction.

Mr. Wickersham — The question might arise in respect to these justices of the peace in cities who have been held not to be courts. There is a decision to that effect, and, therefore, it seems to me that it was, though, to my point of view, an immaterial amendment, yet it would remove a possible question.

Mr. Wiggins — You are mistaken, Mr. Marshall, in your conclusion that from time immemorial justices of the peace have had jurisdiction coextensive with the counties. They have had in towns, but they have not had in cities, and, as Mr. Wickersham says, it has been held that a justice of the peace is not a court.

The Chairman — The question occurs upon the amendment offered by Mr. Wiggins. All those in favor of its adoption signify by saying Aye. Opposed, No. The amendment is adopted.

The question now occurs upon the adoption of section 22.

Mr. M. J. O'Brien — I am not going to oppose this section, but like Mr. Kirby here, I have grave doubts as to the wisdom of going farther than conferring upon the Legislature the right to give these inferior courts equity jurisdiction. I recognize the importance in the development of our great system of charities of strengthening these courts, but this is a very delicate and a very dangerous ground upon which we are now treading. There are dependent children, and I myself am very much interested, because I am head of an orphan asylum, and a director in a child's society besides, and I have had a great deal to do with this subject of these children's courts.

Of course, this bill in form apparently is unobjectionable, because it simply gives to the Legislature the power to do that which it thinks is right. It is constitutionalizing these courts, and it is extending their jurisdiction. I need not say that we would all regret, if under any construction which might be given to this, rights of parents over children, whether they were poor or rich, should be interfered with. It is going a long step to give to a judge sitting in one of these courts, the right to determine whether or not a child should be taken from its parents. The fact that there is a house, a tenement-house, where the carpet is torn, the child under those circumstances or conditions, which look, perhaps, not to be of the kind that would appeal to those who live in better circumstances, is not a reason for separating the child from the parents. I am not opposing this section, but I am not going to vote for it because I have great fear of what might result from an extension. In other words, I am opposed, Mr. Chairman, to the secularization of our charities. The charities in our country have grown up by reason of the spontaneous generosity and the broad spirit which has pervaded those who are better off in extending a helping hand to those who are less fortunate; and I would regret to see the time when, by reason of the further extension of the control of the State, the individuals who have been engaged, men and women, who have done such splendid work, in the upbuilding of our charitable institutions, that they should feel that they were in any way interfered with or discouraged in continuing that kind of work. As I say, this simply gives to the Legislature the right to extend the jurisdiction of these courts. Perhaps it may be necessary, and I merely call attention to the fact that, as I see it, it is not entirely clear to me that it is a wise thing, and for that reason I shall not vote for it, and yet I say I am not opposed to it.

Mr. Wickersham — I think if Judge O'Brien had had the advantage of sitting with the Judiciary Committee when this subject was presented to it by such men as Judge Mayer, Judge Hoyt, the chief judge of the Municipal Court in Chicago, and some of the other

men who have done so much to bring about this new, humane, intelligent extension of the children's court, he would not have the fears to which he gives expression.

Mr. Chairman, no reform which has developed in recent years in our civilization seems to me of greater value than that which has sought to remove neglected and dependent children from the atmosphere of the criminal court, and bring them into the atmosphere of a court of domestic relations presided over by a judge, whose whole thought has been given to the problem of how to benefit the child. Now, Mr. Chairman, without in the slightest degree derogating or detracting from the value of the work of those earnest, sincere, self-sacrificing men and women who do so much for our charities, who have done such splendid service in ameliorating the condition of our unfortunates of one kind or another, it is perfectly impossible that the subject should be left to voluntary effort.

Voluntary effort may assist, it may encourage, it may criticise, it may direct official effort, but never can take the place of the official effort which the State must make in dealing with the children whose parents are unable to properly protect them. Mr. Chairman, it is not possible that the Legislature would ever authorize this power to be applied so as to interfere with the proper care of children by parents who are able to take care of their children, or that it should seek to separate children from parents who were morally fit to care for them. But, Mr. Chairman, every one who ever appeared in these courts knows what an enormous number of parents there are who are morally unfit to be entrusted with the upbringing of their children, and for that reason and because this represents the best expression of philanthropic progress, I earnestly hope this may be adopted by the Committee of the Whole.

Mr. Marshall — I am as much interested in the subject of prevention of the creation of a chasm or a division between parents and children as is Judge O'Brien, and I believe fully in the necessity and the desirability of having religious organizations to assist the parents in taking care of their children, and I have been very active in that kind of work, so far as the people of my own faith are concerned. But, as a result of study of the subject in actual experience, in the observation of the operations of the children's court I am satisfied that no better work has ever been accomplished in this country than that which is being accomplished in the children's courts of our great cities; and the perfection of that system which is made by this provision, is one of the most useful pieces of work that we can accomplish in this Convention. Nobody who has advocated this measure has had the slightest idea of creating a division between parent and child. On the contrary, the desire

has been to establish that relation on a proper basis. Unfortunately, however, especially in our large cities, parents, either because they cannot or will not do otherwise, permit their children to come under evil influences with the result that thousands of them are brought into the children's courts annually. But these courts confer with the charitable organizations of the character in which Judge O'Brien and I are interested. Whenever a Catholic child comes before these courts who has committed any delinquency he is committed, as he should be, to a Catholic Protectory; whenever a Jewish child comes before the court he is committed to the care of the Jewish Protectory; whenever a Protestant child likewise is guilty and comes before the court he is sent to one of the various Protestant asylums. And I unfortunately find myself running into these phrases "guilty of delinquency," etc. The real theory of this is that the child is the victim of some one else's delinquency. In most cases the child is absolutely innocent and is the victim, and the very theory on which these children's courts are to be conducted, and why it is necessary to give them these equity powers, is to eliminate from consideration in those cases the idea of delinquency. It is to deal with a subject as a matter of equity.

Now, to satisfy Mr. Kirby and Judge O'Brien, that there is no intention to use this word "dependent" in any such sense that a child of poor parents shall be taken away from them and the parental relations severed, I call attention to the collocation of words in this section, which is important: The Legislature may confer upon these children's courts and courts of domestic relations such equity and other jurisdiction as may be necessary for the correction, protection, guardianship and disposition of delinquent, neglected or dependent children and for the punishment and correction of adults, responsible for or contributing to such delinquency, neglect or dependency. So that it is where adults may be found responsible for the condition of dependency as well as delinquents which puts the court into operation. The mere fact that the parents or the children are poor of course would not give ground for interference but where there is a situation which calls for protection where the delinquency or the neglect or the dependency is attributable to other causes, in such cases jurisdiction is given. Now, leaving this subject although I am not much in favor of reconsideration of matters which have been decided, to call the attention of the Chairman of the Judiciary Committee and also of Mr. Wiggins to what we have just done with regard to the justices of the peace. Let me read the language on page 31, lines 7 and 9 as it now reads with the amendment just adopted: The Legislature may, however, provide that the territorial jurisdiction of any inferior local court and justice of the peace established in any city or

village in which such court is located. Now, that means no sense at all. It is confused. And it is impossible to know what it means. You say a justice of the peace is not a court but he is an individual. So is a Supreme Court an individual, and a county court judge an individual, but they operate as a part of the court. When a summons is issued by a justice of the peace, it is issued out of the justice's court, just as any other order or mandate or process goes out of the court in which the action is brought. The justice of the peace is merely the official of the court. As an official, he is not a court, but it is the court which has the jurisdiction. Now do you say, when you say "any justice of the peace now existing," it means the individual who is now existing or the individual who is hereafter established in any city, and that that individual shall extend throughout the county? The language is certainly most confusing and the entire harmony of the section is destroyed. I trust that we shall reconsider the motion which we have just adopted. There certainly can be no doubt that justices' courts have territorial jurisdiction over the entire county and the interpolation, to leave this phrase which has just been added in the clause which I have just read, is absolutely to make it meaningless. I therefore move a reconsideration of the vote by which we have just added the words "including justice of the peace in cities."

Mr. Mereness — How would it do to add after the word "court" "any inferior local court or justice of the peace"?

Mr. Wickersham — Mr. Chairman, if I may suggest, I will move to reconsider the vote when Mr. Wiggins comes back.

Mr. D. Nicoll — Mr. Wiggins is right there.

Mr. Wiggins — I just changed my seat.

Mr. Marshall — My motion is to reconsider the vote we have just taken in regard to justices of the peace.

Mr. Wiggins — I supposed you were talking about children's courts.

Mr. Marshall — I then got down to justices of the peace. It may be a far cry from children's courts to justices of the peace —

Mr. Wickersham — Mr. Chairman, Mr. Marshall calls attention to the fact that the words there produce a confusion of ideas, because in the next line you say "established in any city or village shall extend throughout the county in which such court is located, and also throughout such city or village." I think that provision will have to be worded in a little different way. I second Mr. Marshall's motion to reconsider that for the purpose of recasting it in a better form.

The Chairman — The question is upon the motion made by Mr. Marshall that the vote by which page 31, line 8 is amended, by adding the words "including justices of the peace in cities,"

after the word "court" be reconsidered. The question is upon that motion. Those in favor will signify by saying Aye, opposed No. The vote is reconsidered.

Mr. Wickersham — Mr. Chairman, I think the best way to put that would be to insert in line 9 after the word "village" the words "or justices of the peace."

Mr. Mereness — I move to amend Mr. Wiggins' motion by making line 8 read, after the word "court" "or justice of the peace," so that the whole of it would read: "The Legislature may, however, provide that the territorial jurisdiction of any inferior local court or justice of the peace now existing or hereafter established in any city or village shall extend," etc.

Mr. Marshall — I think you will find, under the decisions, that there is no necessity at all for this change or any change.

Mr. Wiggins — Mr. Chairman, I offer this amendment: Page 31, line 9, after the word "village" insert "or of justices of the peace in cities."

The Secretary — Page 31, line 9, after the word "village" insert "or of justices of the peace in cities."

The Chairman — There is a motion made by Mr. Mereness a moment ago to the same effect as the motion now made by Mr. Wiggins. I would suggest, as a matter of parliamentary procedure, that Mr. Wiggins offer an amendment to the amendment offered by Mr. Mereness.

Mr. Wiggins — Mr. Chairman, will you kindly read Mr. Mereness' amendment?

The Chairman — Add after the word "court" on line 8, page 31, the words "or justice of the peace."

Mr. Wickersham — What line is that?

The Chairman — Page 31, line 8, after the word "court" add the words "or justice of the peace."

Mr. Wickersham — That would not remove the confusion.

Mr. Mereness — That should be "or justices of the peace."

Mr. Wickersham — That would not remove the confusion.

Mr. Marshall — Mr. Wiggins' amendment does not clear up the situation, if he says a justice is not a court, then in the next sentence he says he is a court. His amendment would make it read: "The Legislature may, however, provide that the territorial jurisdiction of any inferior local court now existing or hereafter established in any city or village, or of justices of the peace in cities, shall extend throughout the county in which such court is located, and also throughout such city or village irrespective of town or county lines." What does that mean?

Mr. Wiggins — The words "in which such court of justice" would probably meet your desired phraseology.

Mr. Marshall — It is not at all necessary; that is the point of it.

Mr. Stowell — It seems to me there is a curious confusion here between the justice of the peace, who is a magistrate, and the court of a justice of the peace. I suggest that Mr. Mereness should either put in the words "court of a" before the words "justice of the peace" or if Mr. Wiggins would add the words "court of a justice of the peace," it would clear up this confusion.

Mr. Wiggins — I will be glad to adopt any suggestions which would meet the situation. I have so many ideas given to me that I would like to find out just which one is right. Mr. Marshall has sent out for a book which he thinks will decide it.

Mr. Stowell — I agree with Mr. Marshall that a justice of the peace is not necessarily a court.

Mr. Wiggins — I agree with that.

Mr. Stowell — But by the provisions of this amendment you make the justice of the peace a court without using the words.

Mr. Marshall — The justice is not a court, but the court issues the summons.

The Chairman — The Chair understands Mr. Wiggins to offer a further amendment, that, after the word "court" in line 10, the words "or justice" should be added.

Mr. Wiggins — Yes, that is correct.

Mr. Wickersham — Mr. Chairman, will you call for the vote on the amendments as offered? We will get down to Mr. Wiggins' amendment in a few minutes.

The Chairman — The question first is upon the amendment — The Chair will put them separately, although they ought to be amendments of one another — First, is the amendment offered by Mr. Mereness that, after the word "court" in line 8, should be added the words "or justices of the peace." Those in favor of the amendment will signify by saying Aye. There being no votes in the affirmative the amendment is lost. The next is the amendment offered by Mr. Wiggins.

The Secretary — Page 31, line 9, after the word "village" insert "or of justices of the peace in cities." Page 31, line 10, after the word "court" insert the words "or of justices of the peace."

Mr. Wickersham — That was not the motion. It should be "or justice."

Mr. Wiggins — My motion, Mr. Chairman, was to insert the words "or justice" after the word "court," line 10.

The Chairman — The question occurs upon the amendment just read. Those in favor will please rise. Those opposed will rise. The Clerk will announce the result.

The Secretary — Ayes, 36; Noes, 29.

The Chairman — The amendment is adopted. The question now occurs upon the adoption of the section.

Mr. Nye — Mr. Chairman, in view of the fact that I am going to vote against the adoption of this, I desire to explain my reasons. I am very loath to vote against the adoption of the amendment proposed by the Committee. However, in lines 16, 17 and 18, providing that the Legislature may confer upon any inferior or local court power to try without a jury offenses of the grade of misdemeanor, has been explained this morning, as not changing in any way the constitutional right which we have enjoyed for years and years. I had always supposed that a man charged with a misdemeanor, with a very few possible exceptions, was entitled to the right to a jury trial. If I understand the explanation that has been made, I was in error, and if that is true, then before this section is adopted, it should provide that one who is charged with a misdemeanor shall have the right to a jury trial. My experience in the practice of law has taught me that it is quite as important to protect the individual charged with a misdemeanor from the acts of an incompetent, vicious and sometimes — uglier words might be used for the courts that have the disposal of this class of cases, and I believe it is quite as essential that we should protect the individual as it is that we should provide a machine for the rapid disposal of those who may be charged with a crime, and for that reason I shall feel compelled to vote against the adoption of this section, all of the rest of which I am in favor of.

The Chairman — The question occurs upon the adoption of Section 22. Those in favor of its adoption will please signify by saying Aye. Those opposed, No. The amendment is adopted.

Mr. Wickersham — There are no changes in Section 23.

The Chairman — There are no changes in Section 23. The question occurs upon the adoption of Section 23. Those in favor of its adoption will please signify by saying Aye. Those opposed, No. The section is adopted.

Mr. Wickersham — Section 24 as printed is unchanged, with one exception; that is, the words "one hundred and twenty" are taken out and "seventy-five" inserted instead. Before speaking of that section, I should like to move that the brackets in line 16 and line 17, which now surround the words "except justices of the peace," be stricken out, in order to conform to the provision which we have already adopted, all justices of the peace to receive fees in civil cases.

Mr. Westwood — May I ask General Wickersham, before he goes to the other part of the section, what section it was that had to do with the allowance of justice to receive fees?

Mr. Wickersham — It was an amendment which we voted, Mr.

Westwood, you may remember, on Friday or Saturday, to Section 19. The amendment I have not got here, but as I recollect it, it prohibited a justice of the peace from receiving fees in criminal cases, leaving them to receive fees, if the Legislature so provided, in civil cases.

Mr. Westwood — I am advised that what the amendment did was to permit boards of supervisors in counties to determine whether justices of the peace should receive fees or salaries in both civil and criminal matters or not.

Mr. Wickersham — No; the gentleman is mistaken. If the gentleman had been here on Saturday he would probably have been apprised.

Mr. Westwood — Well, Mr. Wickersham, Saturday's roll-call was the first one I have missed.

Mr. Wickersham — I know you have been most constant.

Mr. Westwood — I would like to have go into the Constitution a provision against justices of the peace receiving fees. If that is amply taken care of I have nothing further to say.

Mr. Hale — I have an amendment to offer to section 24.

The Chairman — The clerk will read the amendment.

Mr. Wickersham — Mr. Chairman, I had not finished my statement regarding the section. If the Chair will indulge me I will be very brief; I simply want to point out what we sought to accomplish by this section. The section as the Committee is well aware prohibits judicial officers, in general, from receiving to their own use any fees or appurtenances, and then prohibits a judge of the Court of Appeals, a justice of the Supreme Court, or a county judge or surrogate in counties having a population exceeding 75,000 from practicing as an attorney or counselor at law in any court in this State, or acting as referee. Now, Mr. Chairman, there was brought before the Committee on Judiciary a considerable volume of complaint regarding the fact of the practicing of law by county judges particularly, not so much the surrogates, but by county judges in those counties in which they are allowed to practice law. It was said that, as we know, in those counties the county judge receives, generally speaking, a very small salary. The added dignity of the office and the fact that many clients seek out the county judge and retain him in law suits because of his official position, have made it possible for those counties to get very good county judges for a very small sum of money. Now the last Convention provided that in counties having 120,000 population and upwards, they should not be permitted to practice law. It was urged upon us by some to report a comprehensive prohibition against any county judge or surrogate practicing law in any county. We felt that that was

going too far. We felt that in many counties, owing to sparseness of population, it would be a real hardship on the county to make up the salaries which will be necessary in order to get competent men to fill those offices. After much weighing of conflicting suggestions we have finally reported the amendment as to the 75,000 population. The result is to take 13 counties, all populous, all well-to-do and to require them to pay their county judges a salary on which the county judge could afford to live and prohibit a county judge from practicing law. In order that the hardship involved in that may be minimized we have also reported a provision which has been adopted by this Committee authorizing the blending of the county judge and surrogate in one person, so that if in any county affected by this provision it shall be deemed a hardship to pay both county judge and surrogate a living wage the local authorities may if they choose combine the two offices and prescribe a sufficient salary for the gentleman who is county judge and surrogate.

Now since this provision was reported to the Convention I think every member of the Committee has been approached by somebody who has suggested a different limit should be placed. Some wanted it higher and some wanted it lower. We therefore submit to the Convention that we think there is a real evil there. Some gentlemen will tell you as they told us that under the present provision of the Constitution they have been able to get admirable county judges concerning whom there has been no word of scandal or suggestion ever heard, and that the system works admirably. But the fact is that the principle is a bad one. No judge of a court with the comprehensive jurisdiction of the county court ought to be engaged in the practice of the law unless it is absolutely impossible, owing to the poverty of the county and sparseness of population, to pay him a salary which will make it possible to get good men without allowing them to practice law. But the subject is before the Convention and if the Convention thinks 75,000 is not the correct figure and that some other is correct, the Convention will so decide.

Mr. Hale — Mr. Chairman, I don't want to re-occupy attention that was given to this subject the other evening. The members who were here on that evening were pretty well informed of the difference in opinion which has arisen in regard to the counties which will be affected by this amendment. So far as I know from my own knowledge or anything that was said the other evening, every county that now has a county judge and a surrogate, separate offices, which has over 75,000 population, is entirely content with the present arrangement. It may be that there is an exception to that but I don't know of it. The exception does

not exist in my county, where this arrangement has been in operation for sixty or seventy years. The exception does not exist in Jefferson county, adjoining. It does not exist anywhere in Northern New York, that I know. Now we have heard here a great deal about home rule. Just what home rule is or what home rule was so far as the cities have looked at it, we are a good deal in doubt about. We have listened with great patience and a great deal of interest to Doctor Low and Doctor Franchot and the Doctors Smith, etc., and I have begun to think that if there was anything about home rule that was good I would like to get a little of it for my county.

Mr. Wickersham — Throughout all these discussions hasn't it been recognized that the administration of justice was a matter of State concern?

Mr. Hale — Yes; and yet they are asking the State for home rule. Now, I would like to have the principle of home rule apply to these counties. The counties that would like to have the surrogate and the county judge apart from each other are not interfering with the other counties or the cities. It is peculiarly a matter for the county to decide in its own instance and I say it would be reaching in and interfering with a matter about which the rest of the State has no concern except to see that justice is done. Now if justice is done to the satisfaction of all the people of the county it must be done to the satisfaction of all the people of the State, because where the administration of justice in the county is perfect, or as near as can be, the rest of the State has no reason to find fault. Now you have gone to the extent in the last two lines of Section 17, "The legislature may at any time consolidate the offices of county judge and surrogate in any county"— you have gone to the extent of providing the perfect remedy for such ills as were complained of the other evening by Mr. Tierney. Now, why should you compel St. Lawrence and Jefferson counties which have never had any scandal of a judge attempting to influence jurors because he held office, why should you punish them to get at a condition of things in Essex county or Clinton county which would not be affected by this situation at all, because they have less than the prescribed population? Why should you make us give up the having of these offices in separate tenure when the remedy for the condition of things is either a proceeding to disbar or a proceeding to remove the official? The remedy is entirely wrong. We are satisfied with the system we have. It has given us some of the best men who have entered into the service of the State: Judge Russell, who was attorney-general and a justice of the Supreme Court; Charles O. Tappan, a justice of the Supreme Court; Judge Swift, presiding judge

of the Court of Claims; and Judge Kellogg, now sitting in the Third Department Appellate Division, and others; and no one of these men would ever have looked at the office of county judge if he had been disqualified from practicing law. Now home rule is not always something you have not got and want, but it is sometimes something you have and want to keep; and that is the situation in the county of St. Lawrence and in Jefferson county where these offices are separate, and we simply ask you to let us alone. We are satisfied. If we want to escape, if we want to alter these offices, why, we may do it under the provision passed the other night.

Mr. J. S. Phillips — Mr. Chairman, it is not my purpose to detract in the slightest degree from the splendid work of the Judiciary Committee. I do not quite agree, however, with the attitude of the members of that committee who seek to save the up-State counties, when as a matter of fact I claim that they are not sufficiently familiar with the sentiment that exists. We have here a proposition which seeks to prevent the county judges and surrogates in thirteen counties where the restriction does not now exist, from practicing law, and as nearly as I have been able to ascertain, of the thirteen counties included, with the exception of two counties, there is not a single representative in this Convention that is asking for this proposition. Now, I may be mistaken, but I am of the opinion that the representatives from those counties concerning which my friends who live in the greater centers of population are so anxious to save from themselves, I say that those representatives I think are fully as capable of gauging the sentiment in those counties as are these gentlemen who probably never have been in those counties unless they have ridden through them in an automobile, and the only way in which they have ascertained anything about the courts is perhaps when they have been brought before them for a violation of the speed ordinance. Now, the people in those counties that you gentlemen say the county judge and surrogates shall no longer practice law are fairly well satisfied, and from my observation and from my short experience as a trial lawyer, mostly confined to these so-called rural counties, I think that the administration of justice in those counties is of as high an order as in some of the other counties with a larger population. I have not in my short experience, I have not at least in the territory where I have practiced found any great complaint because the surrogate and county judge are permitted to practice law. We elect in those counties men who stand highest in their profession, men who have earned the right to hold the high office of county judge and surrogate, and on account of the meagre salary that is paid, if this amendment is

adopted you can no longer obtain men of that calibre to hold these offices. I know that it is an easy thing when a man is beaten in a law suit to find some excuse for it, and I have had the experience, when the county judge was opposed to me and I have lost the case, but I never thought it was on account of the position which the county judge held, or because he had any distinct advantage among the jurymen, and I cannot but feel that some of these men who now are so anxious to fasten upon these counties this prohibition have been defeated in some law suit where their opponent was possibly the surrogate or the county judge and that was the excuse they offered for defeat. Now, I reiterate again that of the counties, thirteen in number that are represented here by the delegates, that only two, or possibly three of the thirteen, are in favor of this amendment.

Mr. D. Nicoll — Don't you think it wrong in principle that the county judge or surrogate should be allowed to practice law? Don't you think the principle is wrong?

Mr. J. S. Phillips — I do not.

Mr. Westwood — Will the gentleman state which those counties are?

Mr. J. S. Phillips — Broome, Chautauqua, Dutchess, Jefferson, Nassau, Niagara, Oswego, St. Lawrence, Steuben, Suffolk, Ulster.

Mr. Wickersham — Will the gentleman state if that list is of the counties of more, or between, 75,000 and 120,000 in population? If so, he is in error.

Mr. J. S. Phillips — I did not quite understand your question, Mr. Wickersham.

Mr. Wickersham — Were you stating the counties in excess of 75,000 population and less than 120,000?

Mr. J. S. Phillips — Yes, according to the statistics of population in 1910.

Mr. Wickersham — I don't think I know what year my statistics are taken from but they do not include Oswego, which had 71,664.

Mr. Stowell — If the gentleman will permit an interruption, the county of Oswego under the census of 1910 had about 72,000. Under the present census it has between 76,000 and 77,000. That is why it is included in this list.

Mr. Wickersham — I have not seen the present census figures.

Mr. Stowell — I have not the exact figures with me.

Mr. Wickersham — I took my figures from the Red Book, as to the figures for 1910, and in that compilation Oswego has a population of 76,664, the other counties included were Broome, Jefferson, Nassau, Steuben, Richmond, Dutchess, Chautauqua, Niagara, St. Lawrence —

Mr. J. S. Phillips — That does not differ from the list I have just read with the exception of Oswego.

Mr. Wickersham — My attention was struck by Oswego, which is not in the list as I have it. Perhaps if you will pardon me I will put on the record the salaries paid in those counties at the present time. Broome, with a population of 78,809, has a county judge with a salary of $5,000 and no surrogate; Jefferson, with a population of 80,382, has a county judge with a salary of $2,000 and a surrogate of $2,000; Nassau, population 83,930, has a county judge and a surrogate, separate officers, each receiving $3,500; Steuben, population 83,362, a separate county judge and surrogate, the former receiving $1,500 and the latter $2,000; Richmond county has a county judge, no surrogate, population 85,969, the judge's salary is $7,500; Dutchess, population 87,761, county judge, salary $3,000; and a surrogate with a salary of $3,500; the county of Schenectady has a population of 88,235 with a county judge at $4,000 and a surrogate at $4,000; St. Lawrence county has a population of 89,005 and pays its county judge $1,750 and its surrogate $1,750. I have taken these from the Red Book. After I have finished, if the gentleman wishes to make a correction, I am willing. The county of Ulster, with a population of 91,769, has a county judge at a salary of $3,000, and a surrogate at a salary of $3,000. The county of Niagara, with a population of 92,026, has a county judge and a surrogate in one official, who is paid $5,000. The county of Suffolk, with a population of 96,138, pays its county judge $2,000, and surrogate $3,000. The county of Chautauqua, with a population of 105,126, pays its county judge $2,000, and its surrogate $2,000. The county of Orange, with a population of 116,001, has a county judge at $3,000 and a surrogate at $2,500. These are taken from the Red Book.

Mr. Hale — I would like to make a correction in the matter of the surrogate in St. Lawrence county. He is paid a salary of $1,750. He is paid outside of that, an allowance of $750 for office expenses, etc., making the salary $2,500. The other salary was correctly stated by Mr. Wickersham.

Mr. J. S. Phillips — I am advised by Mr. Smith, who has the figures of the new census, that there are fifteen counties instead of thirteen that would be affected by this provision.

Mr. Wickersham — I have not seen the new census figures, and have no information in regard to them.

Mr. J. S. Phillips — Well, the figures can be obtained in the Secretary of State's office, and there is where these came from. The point I desire to make is this: Possibly with the exception of two, not to exceed three, of these fifteen counties, their representatives in the Convention are opposed to this proposition.

Mr. Wickersham — You mean to say each representative is opposed to having his county included in this, or that they all together are opposed to the whole proposition? Because my experience has been, each one has been perfectly willing to have the others come in, but objected to his own being included.

Mr. J. S. Phillips — I assume he would be consistent, that if he objects to having his own included, he also is unwilling that his neighbor's county should be included.

Mr. Wickersham — I have seen no such unwillingness.

Mr. J. S. Phillips — Well, the vote upon the amendment would determine that. And, with all due deference to the Judiciary Committee, I insist that the men practicing law in those localities are better able to judge whether or not any evils exist in those counties. There may be some of the counties included within the list of fifteen where abuses exist, but in my judgment they are few. In the counties that have come under my observation, I know that there has been no complaint to any considerable extent, unless perhaps some man, as I have stated, who has been defeated in a lawsuit and is looking for an excuse, where the county judge or surrogate has been counsel upon the other side, has been very willing to give that as an excuse.

Mr. Wickersham — Why does the gentleman think the last Convention prohibited the county judges from practicing law in counties of one hundred and twenty thousand population?

Mr. J. S. Phillips — It may be, Mr. Chairman, that the representative from those counties that were included within the one hundred and twenty thousand population were asking for that proposition, and they had a right, because they represented those districts. Of course, I may be wrong.

Mr. D. Nicoll — Mr. Chairman, let me answer the question of the Chairman of the Judiciary Committee. The principal reason was because we felt that in the counties where the population was 120,000 or over, the county judge or surrogate would be so occupied with public duties that he should not practice law. That was the principal reason.

Mr. Wickersham — Mr. Nicoll, was there not another reason? Was there not a recognition of the sound principle that it was incompatible with the interests of the two administrations of justice, that the man administering the office of county judge should be engaged in the practice of law and appearing at the bar of court in ordinary civil and criminal litigations?

Mr. D. Nicoll — Well, there may have been some persons animated by such nobility of thought as that.

Mr. J. S. Phillips — I think the gentleman from New York, Mr. Nicoll, has answered the question, that in these large counties

the time of the county judge and the surrogate is taken up so that he is unable to practice law. I understand that in some of these counties included, for instance, in Niagara, the county judge and surrogate does not practice law.

Mr. Franchot — No, and they are combined in the same office.

Mr. J. S. Phillips — But their duties are sufficient to take up nearly all their time, so that they are not, as a matter of fact, practicing law, and that situation, I understand, is true of at least one other county in this list. Now, Mr. Chairman, I don't care to take any further time of the Convention, but I do hope that the amendment which was offered by the gentleman from St. Lawrence, Mr. Hale, will be adopted.

Mr. Westwood — He has said, as I have understood him, that representatives to the Convention from only two of the fifteen counties were suggesting this change be made in the Constitution. That is substantially, isn't it, your statement?

Mr. J. S. Phillips — I said two, possibly three. And I included — I anticipate the question he is about to ask — and in the three I included Chautauqua, because I understood the gentleman —

Mr. Westwood — Did you also include Cattaraugus?

Mr. J. S. Phillips — Yes, the county of Cattaraugus. I understood the gentleman represented Cattaraugus as well as Chautauqua.

Mr. Westwood — The gentleman is quite right, and also quite right in making the exclusion.

Mr. M. Saxe — Mr. Chairman, I would like to ask the gentleman whether the real point of his proposition is not one of salary? That is, isn't it a fact that the people of the small counties feel that they cannot afford to pay the county judge, or the surrogate, a sufficient compensation so as to secure a proper man to fill the office without permitting the incumbent to practice in order to make a respectable livelihood; is not that the right reason?

Mr. J. S. Phillips — That is one of the reasons, yes, sir. And, furthermore, Mr. Chairman, they would not give a salary that would be sufficient to attract to the office the class of men which heretofore have filled it. I am speaking now, of course, of the counties with which I am familiar.

Mr. M. Saxe — Mr. Chairman, that being so, if the principle is correct, and I for one believe it to be a correct principle, and one in which the State itself is vitally interested, to wit, that a judge should not practice while he is holding office, why shouldn't it help out the situation if a provision were made by which the State would contribute to those counties some portion of proper salary?

Mr. J. S. Phillips — Oh, no, Mr. Chairman, these counties would not ask the State to do that. They are willing to take care of their own judges, and I repeat again that the administration of justice in those counties I believe is of a higher standard and real justice is meted out to a greater degree than in some of the counties where they pretend to stand for all these high-minded principles, and the counties affected by this provision are perfectly willing to pay for the administration of justice in their territory. We firmly assert that the evils and abuses which have been mentioned do not exist in these counties by virtue of a practice which has been followed for a hundred years.

Mr. E. N. Smith — Mr. Westwood spoke to you about Cattaraugus county. I call your attention to the fact that the population of Cattaraugus county, according to the census of 1910, was 65,919.

Mr. J. S. Phillips — Well, I included, Mr. Smith, Cattaraugus county, because I am somewhat acquainted with the situation in Cattaraugus county and the men there, and they are claiming that this census which is now being taken will bring it over 75,000. Whether that is true or not, I do not know. Mr. Smith says it is not true. They make great claims up in Cattaraugus county.

Mr. Wiggins — You remember that was claimed to be the supreme county of the State by Mr. Westwood.

Mr. J. S. Phillips — It was about ten years ago, I believe, the supreme county of the State.

Mr. Westwood — Mr. Smith will recognize the inefficiency in remedying the situation when I say that, while both Cattaraugus and Chautauqua are in the same Senatorial district, they are distinct counties.

Mr. Tierney — Mr. Chairman, I am very grateful to the Judiciary Committee that it is with me to-day. It is unfortunate for the proper disposition of this article that it was not with me last Friday. Perhaps I was unfortunate in suggesting the remedy before the Convention had called to its attention the disease. It would not be necessary for the State to contribute to the county and surrogates' courts if, in the counties where the courts are presided over by different officers, one officer was compelled to preside over both courts. For instance, in the county of Cattaraugus with a population of a little over 65,000, they have a county judge and surrogate. To the county judge they pay $1,500, and to the surrogate, $1,500. I suppose that, along with that, goes maintenance of those separate offices. I very humbly suggest to the gentleman from Cattaraugus that the 65,000 people there could afford to pay $3,000 or even $5,000 to one officer who would be

able to preside in a dignified way over a dignified court, and he would not have to get down off of the bench and eke out an existence by mixing up in the rough work of the practice of law.

It is, at first glance, absolutely inconsistent with the idea of the proper conduct of a judicial officer that he should be permitted to practice law. The Chairman of the Judiciary Committee said this morning that litigants in these counties, where the judges practice law, seek out the county judge to represent them as attorneys, now because they are permitted to hold out that additional inducement to litigants they should be prohibited from practicing law, for no layman should be permitted to think that a judge on a bench could come down into the court or into the Supreme Court and help out because he was the county judge or surrogate. Don't tell me — and I am not complaining of any abuses that I have suffered — don't tell me, however, that the county judge who once or twice a year charges and has charge over the panel of jurors which will come back into the Supreme Court has not an influence over that panel which is wrong. It is absolutely wrong in principle. It is indefensible. You plead herein this amendment offered by Judge Hale, that it be adopted because of expediency. The Committee has given away something to expediency when it says that in counties of over 75,000 judges may practice law. Why don't some of you go a little farther and do something for the principle of the thing, now that you are writing a Constitution, and be willing to give up some of your own interests? Why, this talk of home rule for counties — what a specious argument that is! If the counties shall say how many courts they can have, what the salaries shall be, and whether or not the judge can practice law, then the county ought to have the right to say what the jurisdiction of the court shall be. And that, certainly, the State of New York, guarding its sovereignty as we hear it declared, is not going to give up to the counties. We are told that the people in these counties are fairly well satisfied. Why? Are they satisfied to tolerate an abuse? If it is proper that the county judge or surrogate should practice, say, in Cattaraugus county, then it is proper that he should practice in Chautauqua county. You cannot change the principle by changing the population of your county.

Mr. Barnes — If you will offer an amendment to make this apply to every county in the State, I will be pleased to vote for it.

Mr. Tierney — Please forget any personal, selfish interest and let us do something here in this one section that will be worth while. Write into the Constitution here that judges and surrogates cannot practice law anywhere in the State, and then reconsider Section 22, if that is it, and accept my amendment. Combine the two offices and permit the Legislature or the board of supervisors

— I don't care which — to pay these officers a sufficient salary to induce your best practitioners to accept the office.

Mr. Austin — I am unable, myself, to understand the excitement which some people manage to work up about the abuses alleged to arise from county judges practicing law. Since this matter was under discussion last week,— and on Sunday — I looked up a few records and found, since I have been practicing law, which is not such a very long time, I have personally tried law suits in which six different county judges have been opposed to me. I can say with the utmost frankness that I have never in any of those cases found myself under any disability other than was presented by the superior attainments of my antagonists. No element of unfairness, nothing could be said to have crept in any of those cases, I am sure, which could in any way be interpreted as having a sinister influence upon the result of the suit because the county judge was on one side or the other. Now, it seems to me — and I am not going to take up any great time talking about this matter — that we have a very simple question presented, and that is, is there any such crying evil in connection with this matter as to demand constitutional action upon it. I never heard any great cry for this change until it was brought up here in the Convention the other day, and I think I keep myself moderately well posted upon matters of that kind. There is no great cry for it. You have in the present Constitution a limit of 120,000, and then you have very properly provided therein that the Legislature may impose a similar prohibition upon county judges and surrogates in other counties. If there is any evil existing in any county or in any class of counties, that should be remedied, there is the authority to remove it in the Legislature; and to my mind, until a demand for a change of this sort becomes so great as to necessitate some constitutional provision upon the subject we might very much better leave the subject where it belongs, under present circumstances, with the Legislature. I therefore very earnestly hope that the amendment offered by Judge Hale will prevail.

Mr. Mereness — I have always lived in a county that will not be affected by this proposed amendment. We have had county judges up there that were very busily engaged in the practice of law whenever they could find time. Whenever a healthy public sentiment has seemed to demand a change in that regard we have had county judges — one that I remember of, who held the office for sixteen years, had such regard for public sentiment in the county that he refrained from practicing law during his incumbency. I do not know that the people in the country generally are interested in this question. I am inclined to think that the abstract proposition creates a more active interest in the minds of the one hundred and twenty odd delegates in the Convention who

are possibly looking for something along the line of suggestion. In a small county there is really more reason why a county judge or surrogate should be prohibited from practicing law than there is in a larger or more populous county, because, the smaller the population, the larger the percentage of people who come in touch with the county judge and the surrogate. It is, of course, entirely impossible to gauge just exactly what the effect will be upon the men of the county who are liable to be called to sit upon a jury. For instance, up in our county it is possible that we have people that are called to sit on a jury occasionally who imagine that a man who has once worn the ermine — that the words as they fall from his lips come with a great deal more weight than they do from the lips of a man who has never been thus favored. Personally, I have no grievance. I have practiced in the county against county judges that have been very prosperous in the way I have suggested, and I have practiced with the other kind, and I am very much pleased to say that I am still in the game, so I have no personal feeling. But I simply want to urge that there is more reason, really, for this provision in a county of less than 30,000 population, than there is in a county of over 75,000 population. I might mention further that, within the district that I have the honor to represent in this Convention, we have a county of very large area, as to which a special provision was made in the Constitution, that it is not necessary for the county judge and surrogate of the county even to be an attorney and counselor at law at all. And, having in mind the fact that it is not always the best lawyers who make the best judges, I am very proud to say that I have not had the slightest complaint from my constituents in Hamilton county, but that the scales have been well-balanced in that portion of the district which I represent and there is no great evil in Hamilton county, at least, in this respect. Now, I think, Mr. Chairman, with all due respect, that we ought to act upon this question from principle; that we ought to leave the matter entirely open; that we ought to put the bars up equally for every county of the State. If it is a basic principle, let us leave it basic. If it is a principle as to which we are to have one provision as to one county and another for another, and another for another, and another for another, let us leave it to the Legislature to pick out the counties that want to be excepted from the general provisions of the Constitution of the State. Most of you know that I am nothing but a relic.

I know a good deal more about that than you do, Judge O'Brian. I am a relic, and let me tell you one thing: I would be glad to see a Constitution of the State of New York wherein every citizen from Montauk Point to Lake Erie should stand equally before the organic law.

Mr. Tierney — I offer the amendment which I have sent to the Secretary's desk.

The Chairman — The Secretary will read the amendment.

The Secretary — By Mr. Tierney. Move to strike out on page 32, all of line 20, and in line 21 the word " twenty ", the bracket and then " seventy-five thousand."

Mr. Quigg — I shall vote for Mr. Tierney's amendment, and if it is defeated, for Judge Hale's, and for the simple reason that the discrimination provided by the Committee in their suggestion is inevitably fixed in the notion either of dishonor in or advantage to an officer elected by the people. If it is " dishonor in " I reject it, and I cannot vote for the discrimination because the people have approved him. If it is " advantage to " him, I am with him, that he should have the advantage, because the people have conferred it upon him. On that theory, Mr. Chairman, I shall support Mr. Tierney's proposition, and in case of the failure of that, Judge Hale's.

Mr. E. N. Smith — I had supposed that the substance of this matter was disposed of at the last meeting of the Committee when Mr. Tierney's motion to amend was voted down, but he has now offered the same amendment, or an amendment which has the same effect as his former proposal, for the consideration of the Committee. I hope this will again be voted down and I also hope that the amendment offered by Judge Hale will be adopted. It seems to me like words of superrogation to go over this matter again. We went over this once before in Committee. It seems to me, however, to try to add a new thought, that the Judiciary Committee would have done well to have called before it the delegates from the counties which were to be affected by the proposal.

Mr. Wickersham — Mr. Chairman, the Committee invited every delegate of this Convention to appear before it with respect to any question in which they have interest. And I think the delegate himself was before the Committee.

Mr. E. N. Smith — Not on this matter.

Mr. Wickersham — It was not this matter, but something very much like it.

Mr. E. N. Smith — I never knew this matter was before the Convention until it came up here in the form of a report from the Judiciary Committee. It may be my neglect, but what I say to-day is that the committee, I believe, has fallen into this error, that the counties which are affected by this prohibition or this provision are not the counties in which there is any trouble. There is no trouble of the kind Mr. Tierney has spoken of, and if he will look over the list of testimony presented before the committee on

this subject he will not find in the list many of the fifteen counties that are affected by the proposal. Now, I can simply add to the testimony that has already been given on this subject what I said before, I think on Saturday, that so far as we are concerned in Jefferson county, so far as Oswego county is concerned, and so far as St. Lawrence county is concerned, that is about as far as my knowledge goes on this subject, there is no reason whatsoever for the adoption of the proposal of the committee. There never has been any complaint of the kind that has been suggested before this committee.

Our judges in the county court have been excellent men, as have been our judges of the surrogates' courts. We cannot combine them. Our surrogate has about all the work he can do. Our county judge does not have all the work he can do; and right here it might be well to call attention to the fact that the reason the salaries are so small is not because the counties are not willing and able to pay the salaries that the positions require,— but because of the fact that the county judges do not have to work throughout the year, if you please, or be engaged throughout the whole year.

Mr. Tierney — I just wanted to know, Mr. Chairman, will the gentleman support an amendment to strike out all of Section 24, the effect of which would be to permit any judicial officer to practice law.

Mr. E. N. Smith — I don't think it is necessary. I think that simply extends the hardship. I think, Mr. Tierney, if you have any particular evils of which you complain you ought to address yourself to those evils and the places where they exist, without making us carry the burden of your trouble.

Mr. Tierney — I am not complaining, and this is no burden, Mr. Smith. I simply wanted to know if you would support that proposition to permit any judicial officer in the State to practice law.

Mr. E. N. Smith — To permit them to practice law?

Mr. Tierney — Yes.

Mr. E. N. Smith — Why, certainly not.

Mr. Leggett — Why not?

Mr. Wickersham — Why is it in the county of Jefferson there is this office of the surrogate who devotes all of his time to this excellent work, and is paid $2,000 and gets nothing in addition, while the county judge, who is enabled to practice law and has very little of his time taken, gets the same salary?

Mr. E. N. Smith — Mr. Chairman, the surrogate of the county of Jefferson does not, as a general thing, practice law; that is, I mean in the courts. He does quite a considerable amount of

office business, and he probably ekes out with that meager salary, if you please, with some little earnings from that source. As far as the county judge of Jefferson county is concerned, we have had no trouble in getting able men on the bench, but you put this provision through as far as we can see to-day, and you are going to deteriorate rather than improve the character of the judge in the county courts, in my opinion.

Mr. Wickersham — Let us look at this question fairly for a moment. Of course, every county has a county judge; there is a county judge in each one of these counties. That county judge has staunch friends at the bar and every one of these county judges is an upright and earnest man, concerning whom no breath of criticism has ever been blown. But, now, the fact is this, Mr. Chairman. There are two questions involved in this, and I want to state them temperately and leave this matter to the good judgment of this convention. Here, for example, is the county of Ulster, with a population of 91,000. It has a county judge and a surrogate and pays $3,000 apiece to them. Here is the county of Jefferson, with a population of 80,000, and pays the county judge $2,000, pays the surrogate $2,000. Here is, if you please, the county of Niagara, which has a county judge and surrogate and pays him $5,000, and I suppose they can get a good man for that compensation with this office; it pays a living wage and it gets a good man; and I am told that he does not practice law at all. Now, here we have the great county of Orange, with a population of 116,000; it has a surrogate to whom it pays $3,000, and a county judge to whom it pays $3,500; and then here is the county of Chautauqua, that famous county where all the eloquence and all the high-thinking in the world is brought and exploded more or less harmlessly, it pays its county judge $2,000, and its surrogate $2,000. Now, isn't there involved in this the questions to which I have referred, namely: First, is it a sound principle that the county judge who presides at all of the criminal trials, practically, that take place in the county, except perhaps the more important homicide cases, who has before him as jurors in his court a large number of people of the county, that he should come down from his bench and go over into the Supreme Court and appear at the bar before some of these same men who have served or who are going to serve as jurors in his court, advocating the case of some particular client. I agree with Mr. Barnes, that the whole prohibition should be made absolutely comprehensive. We do not make it absolutely comprehensive for the fact that there is the practical objection, that some of these counties, by reason of sparse population, insufficient means, would find it a hardship. Their county judge, in the first place, would not have enough to

do to keep him occupied and they could not afford to pay him a sufficient salary. But, tell me, which one of these counties of Broome, Jefferson, Nassau, Steuben, Richmond, Dutchess, Schenectady, St. Lawrence, Ulster, Niagara, Suffolk, could not afford to pay a salary of from $5,000 to $7,500 a year for a county judge and surrogate? Combine the two offices, if there was not enough for both of those offices, and if there is enough work for two of them, have two separate offices, and pay them a proper salary, but don't let us have the spectacle of the judge of this court, the county court, which is one of the greatest tribunals in our jurisprudence, coming down from his bench, divesting himself of his judicial ermine, but not of his judicial prestige, and appearing at the bar in the advocacy of private controversies.

Mr. J. S. Phillips — Did you have any complaints of abuse of these systems from the counties which you have mentioned here?

Mr. Wickersham — Mr. Chairman, I am unable to say what particular counties we had tales of abuse from, but we had some of the best men in this Convention say to us that there was no doubt that when people went up into these counties with their important lawsuits, the first thing they tried to do was to retain the county judge, because of the position, the influence, real or fancied, that the county judge exerted, and these men who do not want to have it extended to their own county for some reason or another, in private conversations say that the system is not a good one. I don't mean to say that all of them do, but a number of them do.

Mr. Wiggins — Mr. Chairman, I regret very much indeed that it is necessary for me to disagree with the Judiciary Committee and their report on this subject; but I am impressed with the fact and from the knowledge which I have of the conditions prevailing in these counties, that the members of the Judiciary Committee have looked at the subject from the viewpoint of the man who lives in the city and who is surrounded continuously with litigation, and who does not understand and appreciate conditions in rural communities. Now, where are the people who come before this Convention and ask that these counties be taken out of this sphere and reduced to a population of 75,000? Why, it is said it is a principle, a nice general principle, and this is the principle that they are trying to apply to this case, but I say to you, Gentlemen of the Convention, and Mr. Chairman, that there are no such abuses existing in these counties as these men claim. If there are, there would have been a large number of civil bodies here as there have been on other subjects which are being urged before this Convention; but there are no such matters being urged. There are no civic bodies here from any of those counties. There are no

bar associations appearing here. There are no aggregations or groups of individuals or associations coming here and saying that great abuses exist in the county of Broome, or Chautauqua, or Jefferson, or Dutchess, or Orange, or any of these various counties.

The reason they are not here is because there are no such abuses. People who come to these counties to try lawsuits do not always get the county judge. In my county, there was a county judge who occupied that position for eighteen years. He was generally conceded to be the most able attorney in the county, and so far as I can recall, I do not remember the early part of his term — but so far as I can recall during the last years of his term he did not try at the outside over six cases. Now, the present county judge is a trial lawyer. He is not a trial lawyer because he became county judge. He was a trial lawyer before he was ever elevated to the judgeship. It is impossible to make a man a county judge and then say by reason of this particular position which you place him in, he is going to be an able trial lawyer or become able to advocate successfully cases before a jury.

Mr. Wickersham — In speaking about the expression of sentiment in the Convention, perhaps it will be helpful to let me recall for a moment how this matter was adopted by the Committee. We voted on three questions in determining this question in Committee. The first question was, shall the county judge or surrogate be permitted to practice law in any county? On that there was first nine votes No, and six Yes. We then voted on the question, shall the county judge or surrogate be permitted to practice law in counties having 60,000 population or more? Five Noes, seven Ayes. Finally we voted upon the proposition, shall the county judge or surrogate be prohibited from practicing law in counties having a population of 75,000 or more? and on that there were eleven Ayes, one No, and one who voted No because he thought the limit should be fixed at a hundred thousand. Therefore, Mr. Chairman, I think that the Judiciary Committee had evidence before them that satisfied them that there was a real abuse, and that when twelve members of that Committee voted affirmatively on that subject, I think that you may be assured that the Committee had some reason to believe that something ought to be corrected.

Mr. Wiggins — I think the reason that was so, that the matter was brought to their attention, was because of the fact that I introduced an amendment which referred to this subject, and isn't it a fact, Mr. Wickersham, that you did not think of it until I introduced the amendment and it came up before your Committee.

Mr. Wickersham — I cannot say that, because Mr. Tierney had an amendment in.

Mr. Wiggins — Yes, you thought of that when Mr. Tierney leaned over and whispered in your ear.

Mr. Wickersham — No.

Mr. Wiggins — I came before your Committee and you said it was the first time the matter was brought to your attention and you would give it careful consideration.

Mr. Wickersham — The gentleman does not deny it was given very careful consideration?

Mr. Wiggins — Yes, it was, but you dropped into the same error into which the man dropped who started and proposed this amendment in the Constitution of 1894. There was no amendment adopted in the Convention prohibiting a judge from practicing law in any court until 1846, and then the judges in the city of Brooklyn, New York and Buffalo were prohibited only. Then no prohibition was placed in the Constitution by amendment until 1894, and then the matter was presented to the Convention for the first time, and then a motion was made before the Convention, the same as it has been made by Mr. Tierney now, that county judges and surrogates be prohibited from practicing law. I looked it up the other day, and if my recollection is correct, it was defeated by three votes in the affirmative, and something like a hundred odd in the negative. Then an amendment was made to reduce the size of the county from a hundred, I think it was, to sixty-five thousand, and that was also overwhelmingly defeated, and then an amendment was offered to raise the size of counties from a hundred to a hundred and twenty thousand, and that was unanimously carried, and Mr. Root spoke in favor of it, and some of the other gentlemen,— I had the names, but I have forgotten this minute — and the reason advanced at that time for the placing of any prohibition, based upon population, was the reason which Mr. Nicoll stated this morning, at least, I made out that was the reason — it was the reason that in counties of over a hundred and twenty thousand, the county judge or the surrogate was so occupied in his work that he ought to be prohibited from practicing law so he could not fall into the error of neglecting his official duties and engaging in private practice in other courts, and it was, therefore, adopted at a hundred and twenty thousand for the reason advanced by Mr. Nicoll.

You heard him say this morning he was a member of the last Convention and that was the principal reason which controlled the Convention at that time. Now, if there is an abuse at any time, there is a remedy. You are not closing the door so you may never afterwards correct this evil until we have another Convention of this character, because the provision which you adopted

and is found on page 25, provides that the Legislature in the counties — or the Legislature may at any time consolidate the offices of county judge and surrogate in any county. So, if Mr. Tierney or those people who are offended by the activities of the county judge and surrogate find that a condition exists in their counties which should be remedied, they may come to the Legislature, if they have facts sufficient to show good reason for the consolidation of these offices, and certainly the Legislature is empowered to consolidate both of them. Now, the Legislature may also impose a similar prohibition — you will find on page 32, line 22, that the Legislature may impose a similar prohibition upon any county judge or surrogate in other counties, prohibiting them from practicing law. Now, it seems to me to be well taken care of in this provision of the Constitution and that the Judiciary Committee did give much earnest and thoughtful consideration with a view to the future because it provided an elasticity to take care of these counties in the future, elasticity so that county judges could be prohibited in any county upon act of the Legislature, and that the Legislature might consolidate both of those offices at any time if it so chose. Now, in the absence of any evidence that the people from these counties or any smaller counties, demand that this change should be made, I think, as Judge Hale said, it should be left to those counties to decide for themselves. You who are here in this Convention and believe in the principle of home rule should begin right here at the foundation. Let us say right here in these counties of this size, or smaller counties, that we shall exercise with reference to them the same treatment that you hope to give by this Convention to cities, that is, self-government, and let us have the same character of self-government right here. Be broad in your principle, and if you intend to apply this as a principle, apply it as a principle of self-government to all these counties of this State.

Mr. D. Nicoll — The difficulty about that argument is that it is a State function. I get that put up to me all the time when I talk about New York. The argument is that the administration of justice is a State function.

Mr. Wiggins — Well, sir, what you say, leads me to believe that you are inclined to vote in favor of this proposition.

Mr. D. Nicoll — We have no other excuse.

Mr. Wiggins — That may be a State affair, but here is where State affairs begin. Here is where we decide what State affairs are, and what local affairs are, and if we choose to put any of these matters into the Constitution and declare them to be local we can do so. We are by the fundamental law of this State to decide whether these counties shall have a county judge prohibited from practicing law and this is the only place where it can

be decided. It cannot be decided locally, but it must be decided here, and if you men believe in the absence of any specific evidence from any of these counties, that no fault exists and that the counties are satisfied then this amendment of Judge Hale should be supported and the amendment of Judge Tierney defeated.

Mr. F. L. Young — Mr. Chairman, we have been debating a rather important matter for considerable time, and we have had very little authority cited to us one way or the other on the question of whether or not an evil exists. In the year 1900 I represented a defendant who was sued by a county judge for libel. The county judge referred to was plaintiff in the action and was county judge of a populous county. His court was in session practically the year around. He was also one of four men in the county that had to do with the appointment of the Commissioner of Jurors. Representing the defendant, I believed it was very likely that in those circumstances a defendant would not have a fair trial. So I moved for a change of venue, alleging, among other things, the office held by this particular county judge, and particularly dwelling on the fact that it was he who with others selected all the jurors, and that it was he who from time to time had the right or authority to excuse jurors from service, and that he also had authority over the jurors serving in the Supreme Court as well as in the County Court. I believed I made a strong case. The court at special term thought I didn't make a strong case and denied the motion. I took an appeal to the Appellate Division, and the opinion was written by a well-known judicial authority, now the Chief Judge of the Court of Appeals. Among other things in his opinion he stated this, and with your indulgence I will read it: "It is argued in support of the appeal that the plaintiff will have an unfair advantage over the defendant in Westchester county because the jurors there have learned to look upon the county judge as an exponent of the law, and also that, 'by reason of the power of the county judge to excuse jurors from duty in his court, all jurors would dislike to offend the plaintiff, and that if any one of said jurors thought it likely that he might be a party in litigation before the plaintiff in his court, the plaintiff would have an unfair advantage over the defendant.'" That is a quotation from what was urged upon the court. The court answers:

"Neither of these positions is tenable. We have never observed any reluctance on the part of juries at rural circuits to render a verdict against a party represented by the county judge as counsel, on account of the official station or influence of the latter; nor have we ever found a class of jurors in Westchester county or elsewhere who seemed likely to be influenced by such discreditable considerations as those above suggested."

Whereupon, the order was affirmed, the motion for a change of venue denied, and we went to trial and won our suit.

Mr. Law — Mr. Chairman, I come from the county of Washington, a rural county, with 46,000 population. We have a county judge to whom we pay $1,200 a year, and it is all he earns. We have a surrogate to whom we pay $1,500 a year, and it is not all he earns, but both of them are content to occupy the offices at those salaries. In the years I have lived in the county, all my life, there has never been any scandal of any kind arising from the interference of the county judge or surrogate with affairs of court, none that has ever come to my attention. Now, it may be profitable and best to combine some time in the future these two offices in one incumbent. But the two offices require a different character of lawyer. A man who makes an excellent county judge might make a very indifferent surrogate. But if the provision is to go through this Convention and be embodied in the Constitution that the man who holds the office of county judge and surrogate cannot practice law, then, in our county, one of two things must happen. Either they will have to fix a salary so large as to cause practically a riot among the taxpayers, or else get a man of very mediocre ability. Therefore, I am opposed to any proposition that makes it compulsory upon the counties to pass that.

Mr. Stowell — I want to say a word, Mr. Chairman, before the question is put. In the present Constitution there is a provision which requires that judges in the counties of over 120,000 shall not practice law. There is an attempt here made to reduce that limit to 75,000. Now this provision which is proposed by the Committee, if it is adopted here, will affect somewhere from thirteen to fifteen counties, and the result of that will be that out of those, say, fifteen counties, there will be ten or eleven which must do one of two things. They must either increase the salaries of their officers, which will impose a tax upon each one of those counties of anywhere from three thousand to five thousand dollars a year, or we must take inferior lawyers to fill those positions, and no lawyer who has any respect for himself wants a low-grade lawyer to fill either the office of county judge or the office of surrogate. Now, the reason is given by the Chairman of the Judiciary Committee — one of the reasons, and perhaps the principal one, why this change is favored is that these counties are populous and rich counties and can afford to pay this increased tax. That reasoning is a good deal like, and just about as satisfactory, as the answer of the old assessor up here in the county of Oneida, in the town of Verona, who, when asked why he and his associates doubled up the assessment on the property of the New York Central Railroad through their town, said, "Well, it is a rich corporation, and they can afford to pay it, so we have doubled it up."

Mr. Wickersham — Is there not a distinct difference between putting an assessment upon the property of one corporation for the public benefit and determining the amount of property, assessable property, within a county, which it may properly look to for the payment of a proper salary of the proper officials?

Mr. Stowell — I cannot answer that at this moment. I am not well enough versed in those things. Now, there are thirty-seven counties not affected by this proposition. There are fifteen that are. If, as a matter of abstract right — if it were applied to every county in the State, that is another proposition, but this Convention doesn't dare to pass a proposition of that kind. They will have fifty counties — the inhabitants of fifty counties against this proposal at the election, and they do not dare to pass it. My friend Mr. Nicoll — I think from what I heard him suggest, that the idea is right, if we can enforce it. It is a practical question. We cannot do it. Now, principle is a nice thing, and I am in favor of principle, but we cannot do that in this case. I hope that the amendment offered by Mr. Hale will prevail.

Mr. Westwood — I am heartily in favor of Mr. Tierney's amendment. If that fails, I would like to propose — which I shall not,— that the figures in the section be put at 25, and, failing in that, at 50 — which I shall not. It is clearly right in principle and there is no practical consideration which should make its principle yield. I have listened with a great deal of interest to Mr. Young's chapter from the report of the case of the Appellate Division of the Second Department and to the testimony that a distinguished jurist gives us collateral to the decision of this matter. I want to bring to the consideration of the Convention the testimony of a county judge himself in one of the counties which it was presumed would have been affected by this matter, a letter from Judge Dowd of the county of Cattaraugus. It is contained in a couple of short paragraphs which I want to read: "I think the present situation in the rural counties of this state arising out of the fact that the county judges are permitted to continue the practice of law is a serious handicap to the younger members of the profession. I believe it will be readily seen by any person that a man elected a county judge and who still continues to practice law has a decided advantage over the other members of his profession, especially if the county judge is engaged in active trial work. I do not think any member of the bar feels entirely at ease in taking part in a hotly contested trial in the supreme court with the county judge as his opponent while the same attorney has actions pending in the county court which are liable to come up for trial before the county judge within a few weeks thereafter. I believe in my own county, where I not only try a good many

cases for our own firm, but where I am frequently called in as counsel to assist other attorneys, that the younger members of the profession do not like the situation. I am conscious of the fact that they believe that the county judge is, to some extent, abusing his position when he engages in active trial work. And yet the salary of the judge in this county is such that no attorney possessing the necessary legal ability to fill the office would be justified in abandoning the practice of law."

Now, he suggests one alternative, and then the other, which is this: " To increase the jurisdiction of the county court and to bar the man who is county judge during his term of office from practicing law in any other court. In the latter event the minimum salary should be made sufficiently large so that the attorney ", etc. Now, I have among my papers — I cannot put my finger on it now — a letter from the surrogate of Chautauqua county, in which he gives expression to the same ideas and says that it has been a matter of considerable embarrassment many times during his practice that he is called upon to decide questions in his court, knowing full well that upon the calendars then he had ready for trial cases to be hotly contested against each of the men who are appearing before him. In the same letter he states that he has heard the county judge of Chautauqua county give utterance to the same opinion. Now we have heard something about what persons not members of the judiciary may think of this proposition. I submit to the Convention that the testimony of these three judicial officers, all of whom would be affected by the proposal of Mr. Tierney and by the proposal to make it 65,000, should have much weight in the determination of this question by the Convention. The home rule question is not here. If you want home rule, the committee provides plenty of home rule machinery in Section 16, page 23, of the bill. There it is provided that the board of supervisors shall take care of this very situation by making the salary larger. There is no county of the fifteen affected by the committee proposal which, if the offices are not already consolidated, may not consolidate these offices, and, by the payment of a very slight increase over the combined salary of the two offices, pay a man enough so that he will be willing to devote his entire time to the performance of judicial work.

Mr. Wiggins — If you adopt Mr. Hale's amendment, then you have made a good argument because you say the home rule is provided in there. But if you adopt Mr. Tierney's amendment, you wipe out the whole argument because there is no home rule provided.

Mr. Westwood — I make a distinction in favor of Mr. Tierney's amendment, but if that does not prevail, you still have the

home rule provision. I think the proposition ought to pass. There is every reason for it. There has been no sufficient reason urged against it. I think the situation that the report of the committee provides for is a complete answer to all objection that has been made to this provision.

Mr. S. K. Phillips — I don't think I can add much to the arguments that have been made upon this proposition, but I do desire the members of this committee to understand that Dutchess county, in which I live, is absolutely opposed to this proposed amendment. It is one of the larger counties which will be affected by this change. At considerable trouble I have asked the people of that county what their opinions are on this question, and, from bench, bar and layman, the verdict is absolutely against the proposition. I sincerely hope that Judge Hale's amendment will be adopted.

Mr. Franchot — I will guarantee to use only one minute and I rise to speak only because the debate seems to have resolved itself into a confession of faith from representatives of counties. Coming from a county which has been mentioned in the course of the debate and one which has already consolidated the offices and prohibited the practice of law on the part of judicial officers within the county, I think I can speak with impartiality and not solely from the point of view of local interest. I am opposed to this provision proposed by the committee for the reason that it is based, not upon principle but upon the question of how far an admitted principle shall yield to expediency. That is a question which, it seems to me, is legislative, one which it is not within the province of the Constitutional Convention to decide. It seems to me that this Constitutional Convention should not decide wholesale a question of expediency which is very different in the various localities of the State which they are seeking to affect. For that reason I shall support Mr. Hale's amendment.

The Chairman — The question occurs upon the amendment offered by Mr. Hale. The amendment will be read.

The Secretary — By Mr. Hale, page 32, line 20, strike out the bracket. Page 32, line 21, strike out the bracket and the italics "seventy-five".

Mr. F. L. Young — Is that Mr. Tierney's amendment or Judge Hale's?

The Chairman — Judge Hale's amendment.

Mr. F. L. Young — The effect of that is to restore the Constitution to its original form?

The Chairman — Yes. Those in favor of the adoption of the amendment will rise. Those opposed will rise. The clerk will announce the result.

The Secretary — Ayes, 55; noes, 23.

The Chairman — The amendment is adopted.

The Chair has committed a parliamentary error. The amendment by Mr. Tierney should have been an amendment to the amendment offered by Judge Hale.

Mr. Tierney — Mr. Chairman, I withdraw the amendment.

The Chairman — The last vote practically defeats it anyway.

Mr. Wickersham — Mr. Chairman, I had an amendment to strike out the brackets on lines 16 and 17.

The Secretary — By Mr. Wickersham. Page 32, line 16, strike out the bracket after "officer;" line 17, strike out the bracket before "shall."

The Chairman — The question occurs on the adoption of the amendment. Those in favor will signify by saying Aye, opposed No. The amendment is adopted. The question now occurs upon the adoption of Section 24 as amended. Those in favor of its adoption will signify by saying Aye, opposed No. The section is adopted.

The Chairman — Section 25.

Mr. Wickersham — Mr. Chairman, if that may be considered as read.

The Chairman — If there is no objection, it will be considered as read. (Section 25 follows: The Legislature shall provide for the speedy publication of all statutes and rules of court, and the collection, compilation and publication annually of the civil and criminal judicial statistics of the State, and shall regulate the reporting of the decisions of the courts; but all laws and judicial decisions shall be free for publication by any person.)

Mr. Wickersham — Mr. Chairman, I move to amend, by inserting in line 2, page 33, after the word "statutes," the words "civil practice rules," so that it shall read, "The legislature shall provide for the speedy publication of all statutes, civil practice rules and rules of court" — That simply modifies the provision by requiring the publication of those things which shall be the foundation of our procedure and further to remedy a defect which has been pointed out by many students of the subject, and which your committee specially considered in the collection, compilation and publication annually of the civil and criminal judicial statistics of the State.

The Chairman — Those in favor will signify by saying Aye, opposed No. The amendment is adopted. The question now occurs on the adoption of the section as amended. Those in favor will say Aye, opposed No. It is adopted. The question now occurs on the adoption of Section No. 26.

Mr. Wickersham — Mr. Chairman, the only changes are to

make the reference conform to the newly numbered section. I move its adoption.

The Chairman — Those in favor will signify by saying Aye, opposed No. It is adopted. The question now occurs on the adoption of Section No. 27.

Mr. Wickersham — Mr. Chairman, the only change in No. 27 is to make it conform with the section inserting inferior local courts of similar character.

The Chairman — All those in favor will say Aye, opposed No. The section is adopted. The question now occurs on Section No. 28.

Mr. Wickersham — That is a new section, Mr. Chairman, and I suggest that it be read.

The Secretary — Section 28 — the Legislature shall provide for the appointment of a commissioner of jurors in every county having a population of upwards of seventy-five thousand inhabitants according to the last preceding State enumeration; in a county in the first and second judicial departments, by the respective appellate divisions of the Supreme Court in those departments, and in a county in the other judicial departments, by the justices of the Supreme Court resident in the judicial district embracing such county. It shall also fix the terms of office and compensation of the commissioners of jurors and define their duties.

Mr. Quigg — Mr. Chairman, I offer the following amendment:

The Chairman — Mr. Quigg offers the following amendment which the Clerk will read.

The Secretary — By Mr. Quigg: On page 33, line 14, strike out the word "appointment" and insert in lieu thereof, the word "election." In line 17, strike out the semicolon after the word "enumeration" and insert in lieu thereof a period. Strike out all the words in lines 17, 18, 19, 20 and 21 from the word "in," in line 17, down to and including the word "county" in line 21.

Mr. Quigg — Mr. Chairman, I doubt very much whether there in any occasion for the creation of this office, anyway. I doubt very much whether there is any necessity for a commissioner of jurors in these counties that are referred to here. I suppose that the Committee will throw some light on that question, but if such commissioners are to be created, I earnestly hope that they will be elected officers and not patronage plums provided for the appellate divisions. I am opposed to converting the courts of the State into dispensers of patronage. I think the principle is a bad one. Now, Mr. Chairman, I remember when this principle with regard to commissioners of jurors got started. First, I want to ask any member of this Committee to tell me the reason why these

commissioners of jurors should be appointed by the courts that does not equally apply to the appointment of sheriffs and county clerks and registers, all of whom are officers of the courts. This commissioner of jurors has nothing to do that is not pointed out definitely and exactly in the statute. He has no function of discretion. The ordinary commissioner of jurors has none. The office is purely administrative, and why judges should appoint them is more than I can possibly understand. Now, as I said, I remember how it happened, how we began this. It was in the days of invisible government. Mr. Nicoll had tried the case of Jacob Sharpe down in New York, and a good deal of time had been occupied in obtaining a jury, and the judges thought that was wrong, and so they wrote the statute for the special commissioner of jurors — not this one which is to be provided here, but a special one — and the statute was sent up here to be passed. But, don't you see, the Legislature was Republican, and the electorate of New York city was Tammany Hall and Democratic, and so invisible government ordained that the office should not go to Tammany Hall. Now, of course, we know, Mr. Chairman, that invisible government is dead. We are all, I suppose, sure of that, because we all read the obituary notices six years ago of the death of invisible government. We all read how Governor Hughes went up and down the State in the pursuit of invisible government, and finally caught up with the monster, and with his excalibur that had been given him by the Merwyn of public approval and idolatry, he smote the beggar hip and thigh and that was the end of invisible government, maybe. Now, I am not superstitious, but I have seen something right here in this chamber, and I hope we shall not see it again, I hope I shall not have that delusion again, which suggests to my mind that maybe invisible government has not been killed yet, for if I didn't see his form and flesh I am certain that last week I saw the image of him.

Mr. Wickersham — May I ask what mirror the gentleman was looking in?

Mr. Quigg — It was so exact a figure that if anybody had asked me the question that Bernardo asked of Horatio when the Ghost of Hamlet appeared on the platform at Elsinore, "Is it not like the King?" I would have been compelled to answer, like Horatio, "Most like. It harrows me with fear and wonder."

Mr. Chairman, it was in the days of invisible government that this function was conferred of appointing these commissioners of jurors, and all of us Republicans assembled here, as all of us know, simply to keep the office out of the hands of Tammany Hall in New York city. Now, what are we going to do? We may justify that as Republicans, maybe, but now they are going to

apply it all over the State. They are going to take the offices away from you. Now, look what it is. Invisible government did not want Tammany to have it, so what happened? Why, invisible government had agreed that a certain gentleman should be nominated for the Court of Appeals at about this time, and so the judges who were interested in the nomination of this gentleman for the Court of Appeals, agreed amongst themselves for the appointment of his brother to be commissioner of jurors in New York, and then invisible government got all the places under him and they are there yet. There is no term of office. That gentleman died. Invisible government presented its suggestion to the Court, the Court adopted it, there is no term of office, and he has been holding office ever since. Now, is that the way to conduct a place of this kind, and are not you going to extend it all through the State and have these places appointed by the judges? You see, every county over seventy-five thousand gets one, and the Appellate Divisions in the counties in the districts that have seventy-five thousand are going to parcel them out amongst themselves. They shall fix the term of office. They shall fix the compensation. They shall define their duties. Is that right? Now their duties are fixed by statute. They are just as plain as day. They take about three pages of the Judiciary Law. He has not anything to do except to walk a plain mark. What are you giving them to the judges for? Why not let the people elect these officials?

Mr. Winslow — Mr. Chairman, I offer the following amendment, and ask its adoption.

The Secretary — By Mr. Winslow. Page 33, line 14, after the words "Section 28", and before the word "The", insert the words "Commissioners of jurors now in office shall hold their offices until the expiration of their respective terms." Page 33, line 14, after the word "shall", and before the word "provide", insert the word "hereafter". Page 33, line 18, strike out the word "departments" and insert "districts". Page 33, line 19, strike out the word "departments" and insert the word "districts". Page 33, line 20, strike out the word "departments" and insert the word "districts".

Mr. Winslow — Mr. Chairman, these amendments as suggested I think are not objectionable to the Judiciary Committee. If we are to have a provision in the organic law permitting the Legislature to provide commissioners of jurors for all counties over seventy-five thousand in population, it seems proper that some measure of home rule, about which we have been talking so much, should be accorded the county in which the appointment or selection of such commissioners of jurors occurs. By the language of

the amendment offered by the committee, the appointment in the first and second departments is left to the judges of the Appellate Division of those departments. The effect of the amendment which I have offered would be to permit in the first and second departments the appointment of commissioners of jurors by Appellate Divisions of those districts, and in the other districts by the judges residing in those districts. The effect of that would be in our own district, the ninth, which is included in the second district department, that instead of the jurors of the counties entitled to a commissioner of jurors, namely Westchester, Orange and Dutchess, the appointments of commissioners of jurors in those counties would not be made by the Appellate Division sitting in Brooklyn, only one of whom at the present time is resident at the present time in the ninth judicial district, and some of whom, I imagine, may never have been in some of those counties, but would be made by the judges resident in the district. At the present time, the county of Westchester has a commissioner. I think some of the other counties affected have commissioners of jurors. The first suggestion is that the commissioners of jurors now in office be permitted to hold office until the expiration of their respective terms. Otherwise I think it perfectly apparent as to the effect of the amendment offered as to departments.

Mr. Wickersham — Mr. Chairman, I call attention to the fact that the hour of 1 o'clock has arrived and I move that the Committee do now recess until 2:30.

The Chairman — It is moved that the Committee do now recess. If there is no objection, so ordered, and the Committee stands in recess until 2:30 P. M.

Whereupon, at 1 P. M., the Committee took a recess until 2:30 P. M., of the same day.

AFTER RECESS—2:30 P. M.

(Mr. Wagner in the Chair.)

Mr. Wickersham — Mr. Chairman, I would like to say a word about the section under consideration.

Mr. F. L. Young — I rise to state, Mr. Chairman, that I think it is very improper for General Wickersham or anyone else to be required to address empty seats. An important matter is under discussion and I suggest to General Wickersham that he exercise the power vested in him as leader to see to it that there are more persons in their places before he addresses the House.

Mr. Wickersham — Mr. Chairman, I will ask the sergeant-at-arms to summon any members in the building. I think there are

quite a number in Committee-rooms. I waited a moment because I thought some members were detained at their luncheon. We have had an hour and a half recess and we certainly ought to have more members present. It certainly is discouraging that so many members of this Convention take their duties so lightly. While I am waiting, Mr. Chairman, I will move to amend page 33, line 16, by substituting for the words "upwards of" the word "exceeding". It has been suggested as better English. Strike out the word "of" at the end of line 15, so it will be "having a population exceeding 75,000". And in the same line, line 16, strike out the word "inhabitants" so that it will read "having a population exceeding 75,000". It has been suggested as a little better English, and it undoubtedly is.

Mr. Marshall — What is that last one?

The Chairman — Strike out the word "inhabitants" in line 16.

Mr. Wickersham — Lines 15 and 16, Mr. Marshall, strike out at the end of line 15, the word "of" and substitute "exceeding" for "upwards of".

Mr. Olcott — I want to ask you informally, 75,000 having been changed in the other section to 120,000, don't you think this should contain the same figure?

Mr. Wickersham — No I don't.

Mr. Wiggins — I have an amendment to take care of that when it comes later.

Mr. Wickersham — I was only deferring what I had to say in order that we might have a larger attendance of delegates, if possible, but we seem to have some difficulty about that. I will go on, Mr. Chairman.

Mr. Chairman, one of the subjects to which the Judiciary Committee directed its attention was the question of the jurors, a large part of the controversies which arise between the citizens of the State are determinable by trial by jury, and there are many complaints of the character of the jurors in the ordinary civil cases. I think that no more current complaint is heard on the lips of the average citizen than that, "well, what could you expect with the jury," and with the suggestion that juries are composed as a rule of the least intelligent and least competent members of the community. I do not mean to say whether it is so or not, but that is the current complaint. Well, we sought light as to the foundation for this complaint. We have suggested some remedies here for the consideration of the Convention. The first consideration was respecting the method of selecting jurors. Now, at the present time, we have a special system in the county of New York; we have a somewhat different system in the county of Kings; and then we have another system in the other counties of the State,

somewhat modified by special statutes. We have found the existence of a large number of exemptions from liability to jury duty, and I caused to be addressed to every justice of the Supreme Court and every judge of the Court of Appeals in the State a letter of inquiry asking his opinion, as to the advisability of seeking to restrict or abolish various exemptions existing by law from liability to jury duty. In the replies we received from some of these judges we had many suggestions bearing on the jury system and among them a suggestion that if we could extend to the other counties of the State a system of jury commissioners appointed by the court and taken out of politics, we would secure a better lot of jurors than are obtained under the existing system. For instance, the presiding judge of the Appellate Division of the Supreme Court in this department, Judge Walter Lloyd Smith, writes as follows in a letter addressed to the chairman of the Judiciary Committee, dated May 31, 1915, covering a number of points, and he says: "In answer to the questions enclosed in your letter of May 31st. First, I think the legislature should not be empowered to abolish the right of trial by jury in civil cases. That was the answer to one of the questions. Second, if the verdict of eleven out of twelve jurors could decide a case, it would save the necessity of some retrials. I should not give the power to decide a case to less than eleven jurors, and do not think it very important that the constitution be modified in this respect in any way. Third, I do not think a person accused of crime should be permitted to waive a trial by jury and so forth. And then, regarding the examination of jurors. A commissioner of jurors I think, in connection with the county judge and a justice of the supreme court can find abundant material for a good list of jurors after these exemptions are allowed. In my judgment the selection of jurors, however, should always be left to a commissioner of jurors in connection with a county judge of the county and a justice of the Supreme Court residing in a county, if a justice of the supreme court does so reside in the county and otherwise to a justice of the supreme court in the district."

And so, Judge Chester, one of the justices of this department, writing to the chairman of the Judiciary Committee, about the same date, speaks of the exemptions from liability to jury duty, and says; in answer to the question, especially in answer to the fourth question "Should the power of the legislature to exempt persons or classes of persons from jury duty be limited or abrogated? This matter, it seems to me, should be left wholly to the Legislature. It has, it is true, been generous in providing for exemptions from jury service. I am strongly of the opinion that the man who is forced to serve upon a jury against his will makes

a very poor juror and for that reason I have always been disinclined to compel persons to serve as jurors who presented any fair excuse, although not one which under the law would justify his exemption from such service. One reason why so many men shrink from service upon trial juries is because of their fear of the restraint of their liberty under some of the antiquated methods that have come down to us from generations past, especially because of their fear of being locked up for an all-night service in case of their failure to agree. In recent years, however, courts are very much less inclined to keep juries out all night except in the most important cases and it is coming to be quite common in modern court houses to provide dormitories for juries so that they can have some means for rest and sleep while being kept together. While speaking on this subject, although it is not especially germane to the questions asked, I will give some additional views. I think as a rule juries are inadequately paid for the important services they render, and if they were given somewhat better compensation more good men would be willing to serve. There would be danger in very much increase in compensation arising from the fact that unworthy men or what might fairly be called professional jurors would seek such service in order to get the pay, but, accompanying an increase in compensation, adequate protection should be thrown around the preparation of the jury lists. These should be prepared every year, not once in three years as is the case in some counties. This would more quickly relieve the lists of the names of dead men and of those who had removed from the county. These lists should be prepared under the supervision of a commissioner of jurors who ought not to be a politician but who should be appointed by judges under proper civil service regulations and who should be as independent in the discharge of his duties as the justices of the court. The commissioner should be given power to examine all men qualified for jury service in the county and also power to refuse to put on the names of men who were exempt or who for any reason sufficient to him should render them unfit for such service. That would be a dangerous power to place in the hands of a commissioner who was not absolutely independent in the discharge of his duties. But, with a commissioner with such a qualification, he could eliminate from jury service many men who did not have a good record in their community for integrity of character and who were not possessed of fair intelligence.

"Some of the qualifications of trial jurors under the present law (section 502 of the Judiciary Law) are that they should be men of 'fair character, of approved integrity, of sound judgment and well-informed'. Most of the troubles of our present system

do not arise from exemptions allowed by the Legislature, but by the failure to provide some safeguard to prevent men who do not possess the qualifications above mentioned from getting on the jury lists. If an honest and capable commissioner of jurors in each county was given the power to prevent improper men from getting their names on the list, an important advance step would be taken."

Mr. Quigg — I want to ask General Wickersham if he thinks that it is inevitable that a commissioner of jurors will be a politician because he has been elected by the people and if it is certain that he will not be a politician because he has been selected by the judges?

Mr. Wickersham — Oh, of course not, but I think the probabilities are that you will get a better and more impartial commissioner of jurors and one who is less apt to be a politician, if he is selected by the judges than if he is elected under ordinary rules which govern the operations of political officers. If Mr. Quigg has any doubt on the subject he may make inquiries from the various counties of this State and form an opinion. Mr. Chairman, among others of the judges I will read but one more letter from another judge of the Supreme Court, Judge McCann of Elmira. I asked him his opinion as to whether the power of the Legislature to exempt persons from jury duty should be eliminated or abrogated. He said if every county in the State would adopt the commissioner of jurors system and thereby have a system of qualification and disqualification, and as to business engagements and other matters which are now taken into consideration in the exemption and excuse of jurors, there would be no necessity of having any exempt classes; but under the present jury system where the lists are made up by the supervisor, where there is very little attention paid to the matter, the lists have to be thoroughly scrutinized, and therefore it is probably necessary to exempt certain classes. In his judgment the commissioner of jurors system should be extended throughout the whole State. It was adopted in the county about five years ago and has worked with complete success. Now, Mr. Chairman as to legislation creating a commissioner of jurors to be appointed by the court: I think the first one was that which related to the county of Kings, and in the Matter of Brenner, reported in 170 N. Y., the Court of Appeals held that that act was unconstitutional because of the provision in the home rule section of the Constitution which required county officers to be elected by the electors of the respective counties, or appointed by the board of supervisors, Article X, section 2, and for that reason the law was set aside. Only two volumes later there came before the same court the law creating

or authorizing the appointment of jurors in the county of New York, and there by a very subtle opinion the court upheld the statute, upon the ground that New York county had not had a commissioner of jurors, when the new Constitution of 1894 went into effect, as a county office and that the provisions of Section 2, Article X, only applied to county offices in existence at the time the Constitution went into effect, and therefore did not operate to make invalid the law providing for commissioner of jurors in New York county.

Subsequently a law was enacted in Kings county giving the appointment of commissioner of jurors to county officials. Now, Mr. Chairman, the views, the opposing views, on this question may be considered from what Mr. Quigg has said a moment ago here. The object to be attained is that the list of jurors shall contain the names of those persons who are qualified under the law to serve, and who possess the various qualifications so prescribed and those lists should be inspected and corrected at reasonably short periods, not once in three years, but once in a year at least and then it might not be necessary to endeavor to restrict the exemptions from liability to jury service which we have proposed in an ensuing section of this act. The only way in which we can avoid the abolition of all the exemptions from jury duty, or else have our jury system break down entirely, is to secure the most careful preparation of lists of those persons qualified to serve on juries. Now, the Committee, therefore reported a section in which, following the action in a previous section, they provide that in all counties, having a population of 75,000 or upwards, there should be a commissioner of jurors chosen by the court. I have been asked several times to-day whether we were specially insistent on that, or whether or not we would allow that to be permissive and strike out the limitation of 75,000 so as to empower the Legislature to provide for the appointment in any county of a commissioner of jurors, without making it mandatory or without any restriction as to population of counties. Personally, speaking for myself only, that seems a fair suggestion, but the committee has reported the provision which is before you, therefore, I speak for that. But there are commissioners of jurors in a number of counties who are county officers, therefore they must be chosen by the electors of the county as county officers, unless we adopt some such provision as this. Now, I confess to a sense of bewilderment at the process of reasoning which leads anybody to oppose this provision on the ground that it is an expression of the power of invisible government. I venture to say, however, Mr. Chairman, that that argument, however persuasive it is to ears outside of this chamber, will not have any effect here. The whole

question is whether this proposal is a step forward in the improvement of the administration of justice or is it not? Will it be better to have the jury lists made up by a commissioner of jurors appointed by the court, responsible to the court, taken out of the ordinary arena of professional politics, or is it better to leave it as it is, with all the attendant incidents which every one familiar with the Constitution of the State knows about?

Mr. J. S. Phillips — Is there any doubt as to the power of the Legislature now to create the office of commissioner of jurors in any counties it sees fit?

Mr. Wickersham — There certainly is doubt of their power to create that office and authorize justices of the Supreme Court to fill it, if there was the office of commissioner of jurors in the county when the Constitution of 1894 took effect.

Mr. J. S. Phillips —Assuming that this is adopted, as it is here presented, who fixes the compensation? It says, "It shall also fix the terms of office and compensation". In other words, to what body does it apply, to the Legislature or to the Appellate Division?

Mr. Wickersham — Why, to the Legislature.

Mr. Quigg — No.

Mr. Wickersham — Certainly.

Mr. J. S. Phillips — Then you have got to change it materially.

Mr. Wickersham — Certainly "it" applies to the Legislature, naturally, because it is the only antecedent of "it" in the singular.

Mr. J. S. Phillips — I assumed the fact that it did apply to the "legislature".

Mr. Wickersham — Certainly.

Mr. J. S. Phillips — But, it is so far removed from the word "legislature" and there are so many intervening words and sentences, that it did not seem clear.

Mr. Wickersham — To make it clear, it might be advisable to put in the words "the legislature". But, the singular pronoun "it" must have as an antecedent a noun in the singular and the only noun in the singular governing "it" is, of course, "the legislature", because we have been speaking of Appellate Divisions and of justices of the Supreme Court resident, and they are not, either of them, described properly as "it", how much soever they may be "it" at times. But, if it would make it any clearer or easier to understand, I should be perfectly willing to amend by substituting "legislature" for the word "it" in line 21.

Mr. Dunmore — I wish to say a word in favor of the commissioner of jurors, that is, this provision relating to commissioner of jurors. I was serving on the bench at the time the experiment was tried out in Oneida county. There was an excellent man appointed as commissioner of jurors. He performed his duties

very well and the improvement in the personnel of the jurors who went on the jury list was so marked that it was noticeable not only by the judges who held courts in that county, but by the attorneys and everybody else who were brought in contact with them. The effort was made afterwards to give the politicians control of the appointment of commissioner of jurors, and an effort was made to make it a football of politics. Now, for that reason, I am in favor of the appointment being made by the justices of the Supreme Court. There is no question but that all political questions will be eliminated, and a man who proves himself to be an excellent officer, and who discharges the duties of that office acceptably will be continued. The man who was first chosen in Oneida county and did the best work that has been done as commissioner of jurors in the county was put out of office in the county simply as a political move and against the protest of the Supreme Court judge. Now, if it is left to the Legislature, there will be a continual effort on the part of politicians to have the appointment made in such a way in the different counties that they can control it, but if the Constitution fixes the method of appointment and says that the judges shall make the appointment, it removes it from the power of the Legislature to be influenced by the politicians in that way, and for that reason I am strongly in favor of these provisions in the Constitution.

Mr. F. L. Young — Now, Mr. Chairman, I offer the following amendment. I have not written it out, but it is very simple and I will read it. I move to strike out all of Section 28, following the semi-colon in line 17, and to that amendment I want to address a few remarks. If I understand the intention of the committee, as represented by the statement of Judge Wickersham, it is to create an office to be exercised by an officer who will pass upon finally the qualifications of jurors. If that statement is incorrect I want to be corrected. It is not, I assume, there being no reply.

Mr. D. Nicoll — I will say in answer to that, that, of course, the commissioner of jurors does not pass finally upon the qualifications of jurors.

Mr. F. L. Young — I understood Mr. Wickersham to say in the course of his statement that there were many men who were not qualified to serve on the jury, and that the creation of the office of commissioner of jurors would eliminate such men from consideration.

Mr. D. Nicoll — Well, that is right, but that does not enable the man to pass finally upon it.

Mr. F. L. Young — If that does not mean an office to be created vesting absolutely in one officer the power to pass upon qualifications of jurors, what does it mean?

Mr. D. Nicoll — Of course, he will pass upon the qualifications of jurors. For instance, if a man is over seventy years of age.

Mr. F. L. Young — The statute does that.

Mr. D. Nicoll — Also, whether he can read, write or hear.

Mr. F. L. Young — The statute does that.

Mr. D. Nicoll — He determines that in a preliminary way, and in that way he relieves the court in the first instance of a lot of business which otherwise would have to be done at the trial term. That is all.

Mr. F. L. Young — I understand that perfectly well, and if the exclusion is to be made in accordance with the statute that removes that particular objection.

Mr. D. Nicoll — Of course, we have got to assume that it is going to be done in accordance with the statute.

Mr. Quigg — Mr. Nicoll, in New York, if a man does not believe in capital punishment, although he has got to try homicides and burglaries, and every other kind of offense, he does not get on the list in New York county.

Mr. Nicoll — They are not excluded by law on that account.

Mr. Wickersham — Take the first section my eye falls upon in the Judiciary Law, 501. First, the provision in Section 500 is that the town officers are to make a list of trial jurors. This is a general law. It is not applicable to commissioners of jurors. Section 500 requires the supervisor, town clerk and assessors of each town to meet for the purpose of making a list of persons to serve as trial jurors for the ensuing three years. Now, as you say, the statute provides the qualifications, gives a list of those exempt, a list of those excused. Nevertheless, the next section provides, "At the meeting specified in the last section, the officers present must select, from the last assessment roll of the town, and make a list of, the names of all persons whom they believe to be qualified to serve as trial jurors, as prescribed in this article." That is the first thing they have got to do, make a list of the names of persons they believe to be qualified. Then there are subsequent provisions for scrutinizing the list and perfecting it. But the statutes do not operate automatically. The official charged with the carrying out of the statute has a very wide field of operations which he must traverse in carrying out and performing the function ascribed to him by the statute.

Mr. F. L. Young — I am perfectly familiar with the statutes referred to by General Wickersham but I want to ask this question, after the statement made by him. Is it your intention to substitute the commissioners of jurors in the place of these men who are now authorized by law to choose jurors?

Mr. Wickersham — Mr. Chairman, there is not only no such intention, but no such construction could possibly be put upon the

words: "The legislature shall provide for the appointment of a commissioner of jurors in every county," and so on. We never dreamed of such a proposition. What I did mean to say was that, in the opinion of some of the judges who were asked whether they thought exemptions from liability to jury duty should be narrowed or abolished — they suggested that if the system of jury commissioners appointed by the courts were extended throughout the State, at all events, the more populous counties, the question of exemptions would fall into one of minor importance. I think that is a fair statement of it.

Mr. F. L. Young — I am tolerably familiar with the law governing the selection of juries and with the commissioner of jurors laws throughout the State, and particularly with the law governing the county of Westchester. I do not believe that anybody can consistently oppose the appointment of a commissioner of jurors, in every county of the State, although it is limited here to counties with a population of 75,000 and upwards, for the system has worked very well indeed in our county and we would not be without it if we were permitted to have our choice. Having said that, I want to say that I have no doubt that the county of Westchester will strenuously resist the amendment which is proposed, in its present form. In our district we have several counties. Heretofore, our commissioner of jurors has been appointed by four officers resident in the county, and this proposition, if I read it correctly, would permit the justices of the district to appoint a commissioner of jurors for Westchester county, notwithstanding the fact that these judges do not live in the county. That is the way it reads. It says, "resident in the district."

Mr. Kirby — Who appoints the commissioner of jurors now?

Mr. F. L. Young — Four officers: county judge, sheriff, district attorney and the county treasurer. Now, if I am wrong in my interpretation I want to know it now because there will be no point in my remarks.

Mr. Wickersham — You are right. One of the amendments offered here, which would provide for the appointment by the justices in the district, would meet your objection. Mr. Winslow has offered an amendment — You object to the Judge? Well, I cannot meet your views.

Mr. F. L. Young — The point we make is this, and we think it is a point that ought to have some consideration: We can see no reason —

Mr. Wickersham — Will the gentleman state his point, please?

Mr. F. L. Young — The point is that this proposition contemplates the appointment of a county officer by those who are not residents of the county.

Mr. Wickersham — Is your objection to the appointment merely to appointments by justices resident outside of the county or would it be met by a provision modifying it so that the jury commissioner in each county should be appointed by the justices of the Supreme Court resident in that county?

Mr. F. L. Young — That would be perfectly satisfactory to Westchester, but it would not apply to the other counties of the Ninth District, for some of them have no resident Supreme Court justice.

Mr. Wiggins — Is your view met by the amendment offered by Mr. Winslow?

Mr. F. L. Young — Mr. Winslow's amendment provides only for the retention in office of those who are now in office.

Mr. Wiggins — It provides that the word "department" shall be changed in this amendment so as to read "district" and provides in the Ninth Judicial District that the judges resident —

Mr. F. L. Young — Mr. Winslow's amendment does not reach the point which I made, because I am afraid some do not understand it.

Mr. Sears — Would your objection be met if the commissioner was appointed by the resident Supreme Court justices and the county judge?

Mr. F. L. Young — Let me explain to you the situation I am trying to present to you. The Ninth Judicial District consists of the counties of Westchester, Putnam, Orange and Rockland. Putnam county has no Supreme Court justice at the present time, Rockland has one. Orange has one now and may have another, and Dutchess county has one. This Proposed Amendment would authorize these judges, not residents of Westchester to appoint a commissioner of jurors for Westchester, notwithstanding the fact that all the judges are outside of the county.

Mr. Sears — I understood the objection. I was trying to obviate it. It would not be obviated by adding the county judge to the justices, when there would always be some appointing power.

Mr. F. L. Young — That would obviate it to the extent of calling in someone who had a local interest. But my further objection is this: We believe it is a mistake to constitutionalize this office for the reason that it is unnecessary. We now have good commissioner of jurors laws in several counties of the State and they work satisfactorily. That is the reason I propose to strike out the balance of this section following the semicolon. I see no possible objection in the first part of the section, providing that a commissioner of jurors must be had in every county with a population of more than 75,000.

Mr. L. M. Martin — I wish to call the attention of the chairman

of the Judiciary Committee to the condition that exists, I think, in the fourth department. Those counties in the fourth department which have commissioner of jurors have special acts which provide that the resident supreme court judge, or two supreme court judges, if there be two resident in the county, and the county judge shall appoint the commissioner of jurors. If there is only one resident supreme court judge in the county, the supreme court judge, the county judge and the county clerk shall appoint. That law has been effective for some seven or eight years. In 1914 the Legislature enlarged the scope of the general statutes, creating a larger power for boards of supervisors, and the board of supervisors of Oneida county, acting under that power, appointed a commissioner of jurors for Oneida county this year. The commissioner of jurors of Oneida county who was appointed by the supreme court judge, the county judge and the county clerk instituted quo warranto proceedings to oust the commissioner of jurors that was appointed in January of this year by the board of supervisors. The attorney-general, after a long hearing in the matter, has written an opinion and handed down a decision in which he holds that the special statutes creating commissioners of jurors and providing for their appointment by the supreme court judge, the county judge and the county clerk in Oneida, and in Onondaga county by two supreme court judges and the county clerk, are superseded by the general law, and that the appointment by the board of supervisors of Oneida county of the commissioners of jurors of Oneida county was valid and such appointment should stand against any special acts. So, in the fourth department — Brother Smith's county of Onondaga — this year a commissioner of jurors was appointed by the supreme court judges and the county judge. The attorney-general holds that we have a valid and legal commissioner of jurors in Oneida county, appointed by the board of supervisors; conversely, if that is true, the commissioner of jurors of Onondaga county was illegally appointed. Now, that is the situation of the statute in the fourth judicial department of this State, and I suppose also in the third department. So that, under the conditions, the board of supervisors of the county has the appointment of the commissioner of jurors, according to the opinion of the attorney-general, which must be the law of the State to-day. I call your attention to it.

Mr. Wickersham — Will it not be much more satisfactory to have the Constitution make it clear that the commissioner of jurors could be appointed by the court?

Mr. L. M. Martin — I would say to General Wickersham that, if he noticed the peculiar methods employed in Oneida county this

year to appoint a commissioner of jurors and an assistant commissioner of jurors, he would be heartily in favor of this amendment as it stands.

Mr. F. L. Young — Mr. Chairman, I inadvertently included too much in the oral amendment I made. I will hand this up in writing.

The Chairman — The Secretary will read the amendment.

The Secretary — Strike out the semicolon, line 17, and substitute a period. Strike out from the semicolon to and including the period in line 21.

Mr. F. L. Young — It strikes out the words beginning " in a county " down to and including " embracing such county ".

Mr. Wickersham — That would simply leave it: " The Legislature shall provide for the appointment of a commissioner of jurors in every county having a population of upwards of 75,000 inhabitants, according to the last preceding State enumeration ", and that would leave out one of the main reasons for bringing in the proposal, which is to empower the court to make the appointment and not subject it to political choice.

Mr. F. L. Young — I understand that. In connection with that I want to say that, instead of taking this office out of politics, you are putting the courts into politics, where they are not now. If I had my way about it — as I shall not, because I never have my way about anything — no judicial officer would ever appoint anybody except the officers serving in his court as referees, or something of that sort. That is the way to keep the office out of politics.

Mr. Wickersham — As I say, there is a wide divergence of opinion, and viewpoint.

Mr. E. N. Smith — Mr. Chairman, I offer the following amendment.

The Secretary — By Mr. E. N. Smith. Page 33, line 14, strike out the word " shall " and insert in place thereof the word " may ". Line 15, strike out the word " every " and insert in place thereof the word " any ". Strike out the words " having a population of " in line 15, and all of line 16 down to the words " preceding State enumeration " in line 17.

Mr. E. N. Smith — Mr. Chairman, that makes the first sentence read, down to the semicolon: " The legislature may provide for the appointment of a commissioner of jurors in any county ". I see no reason, in the first place, why the provision should be made mandatory; and, in the second place, I see no reason why it should be limited to any particular class of counties. This proposed amendment simply leaves it in the power of the legislature to

appoint a commissioner of jurors in any county, leaving the rest of the section just as it is.

Mr. Austin — Mr. Chairman, without debate, I want to offer this amendment.

The Chairman — Mr. Austin offers the following amendment.

Mr. Austin — I simply want to call attention to the fact that this provision does not make the salary a county charge; that should be taken care of.

Mr. Wickersham — I have no objection to that, Mr. Austin.

The Chairman — The Clerk will read.

The Secretary — By Mr. Austin. Substitute the following for section 28: "Section 28. The Legislature may provide for the appointment of a commissioner of jurors in any county by designated justices of the Supreme Court resident in the judicial district embracing such county. It may also fix the terms of office, define the duties of such commissioner of jurors and fix the compensation, which shall be a county charge."

Mr. Wickersham — Mr. Chairman, I do not quite get the purport of that. It seems to carry out the main idea of this but in language that I would not undertake to pass on at the moment.

Mr. Austin — It makes it permissive to appoint a commissioner of jurors in any county of the State. It makes it permissive to have these commissioners appointed by Supreme Court justices resident in the judicial district or such Supreme Court justices as the Legislature may designate, and it also permits the Legislature to fix the terms of office, and determine the duties and compensation of the commissioners, which shall be a county charge.

Mr. Wickersham — Mr. Chairman, that would destroy one of the principal purposes of the committee in bringing in this present provision, by making it essential that these commissioners should be appointed, not by political authority but by the courts.

Mr. F. Martin — Will the gentleman yield for a question? General Wickersham, could it be avoided by allowing judges of courts of record resident in the counties to make the appointments?

Mr. Wickersham — The objection to that would be that in some counties there is only one judge of a court of record, namely, the county judge, whereas the Supreme Court holds trial terms in every county and the justices of the Supreme Court resident in the district would have no voice in the selection. I think it would be objectionable.

Mr. F. Martin — I fear if you give any more powers to the Appellate Division they will not have any time to decide cases — you keep giving duties and powers to it. I think the judges of the courts of record in the county should make the appointment and then it would be as much out of politics as in any other counties.

Mr. Wiggins — I would like to offer this amendment. I just want to say one word about it after the Clerk has read it.

The Secretary — By Mr. Wiggins. The Legislature may provide for a commissioner of jurors in any county of the State. It shall also fix the terms of office and compensation of the commissioners of jurors and define their duties.

Mr. Wiggins — It was my intention to offer an amendment to strike out the entire clause, that is to say, Section 28. However, after listening to General Wickersham's statement that the decisions, in substance, held that the commissioner of jurors in many counties had been illegally established, I changed the notion which I had and have written the provision so as to make it permissive, and it goes just this step farther than Mr. Austin's amendment: He provides that they shall be appoined by the judicial officers resident in the district, if I recall it, and it is to meet the objection offered, that the Legislature should have the right to provide for the commissioners of jurors and then shall delegate to any body which it chooses the selection of their particular commissioners. That meets the views suggested by Mr. Young, that it should not be done by juricial officers outside the county in which the commissioner is selected.

Mr. E. N. Smith — Mr. Chairman, may we have Mr. Austin's proposition read again?

The Secretary — Substitute the following for Section 28:

Section 28. The Legislature may provide for the appointment of a commissioner of jurors in any county by designated justices of the Supreme Court resident in the judicial district embracing such county. It may also fix the terms of office and define the duties of such commissioners of jurors and fix their compensation which shall be a county charge.

Mr. Marshall — It is very evident that Mr. Austin's amendment does not express the idea that is in his mind.

Mr. Austin — I think you are mistaken on that.

Mr. Marshall — I make that statement because I know that Mr. Austin is a man who is very careful in respect to all of his proposals and does not wish to put into the Constitution anything which would create serious doubt as to the meaning of the language employed and which would create an unheard-of thing. He provides, as I recollect his language, that the Legislature may permit the appointment to be made by designated justices of the Supreme Court. Does that mean they may designate Mr. Justice A, Mr. Justice B and Mr. Justice C to perform that duty? It would certainly lead to that idea. That that is not an extraordinary

suggestion is to be found from an examination of some of the statutes which have been passed with regard to the appointment of commissioners of jurors because we find some of the most extraordinary combinations of officials who are making the appointments. There has been only very recently an act which has met with serious criticism because of the fact that designated officials instead of designated justices are given the appointing power. Now the Constitution should lay down a rule, a principle, which can be followed in any circumstances. Now Mr. Martin suggested that justices of the — judges of the Court of Record in each county should make the appointment. I don't know whether Mr. Martin has considered what the effect of that would be in the county of New York. I forget now how many justices of the Supreme Court we have in that county. It is upwards of thirty — thirty-two. We have ten judges of the City Court who are judges of the Court of Record. I don't know how many more justices of the Court of Record residing there will be. There are judges of the Court of Appeals who reside in the city of New York and who are judges of the Court of Record. Why, we would have an appointing body of upwards of fifty individuals.

Mr. Wickersham — And in some counties consisting of one county judge.

Mr. Marshall — Yes, and in some counties consisting of one county judge. That would be a system which would be most unfortunate. Now, the Committee has proposed that the appointing power in the first and second department should be the Appellate Division in each of those departments. The suggestion has been made that perhaps it might be well in the second department to eliminate the ninth district, and all the justices of the Supreme Court in that district to make the appointment. That may be an advisable course to pursue, and it might be well that in respect to each of the counties we might add a county judge. That might be workable, but if you go beyond that, it would be a very improper method of appointment, to leave it to the judges of a particular county or to make one rule in one county and another rule in another county.

Mr. Quigg — Mr. Marshall, do you see any reason why the people should not be as much trusted to elect these commissioners of jurors as to elect sheriffs or county clerks or registers?

Mr. Marshall — I have no distrust in the people. I have great confidence in the people. I am in favor of an elective judiciary but a Commissioner of Jurors is an official who has to do with the administration of justice. He is as much a part of the judicial system as are the usual officers and attendants upon the court, and the selection of jurors is in a very great degree a judicial

function. It is a function which is a very important exercise of the power of administering justice and I think therefore there is a very good reason why commissioners of jurors should be appointed by the court. The sheriff has another function to perform as far as the judicial system is concerned. He stands merely as the representative of the executive. When an execution is given to him it is an exercise not of the judicial but the executive function. He stands in that sense for the executive department of the government and all of the other duties he performs are to a large measure executive, the keeping of order and peace within the county. The commissioner of jurors performs the single duty of aiding in the selection of jurors, being an important adjunct of the administration of justice. Now, Mr. Quigg in the course of his remarks called attention to the fact that some jurors are excused from participation in cases if they have conscientious scruples against the infliction of the death penalty but that qualification or disqualification is only to be found in the special jury panels in regard to selection of a special panel. That has nothing to do with the question of the ordinary selection of jurors, and that matter is in the power of the Legislature to provide for.

Mr. Quigg — If the Legislature specifies their duties, Mr. Marshall, and as to how they are to be drawn, and makes the office so entirely mechanical as it now is, why should the judges appoint them?

Mr. Marshall — The duties are not entirely mechanical. In the first place the statute lays down the rule of qualification. It provides that persons over 70 years of age, etc.—

Mr. Barnes — I do not wish to interrupt your remarks, Mr. Marshall, but I have the law here for the government of jurors for the county of Albany, which I think will answer Mr. Quigg's question absolutely, if you would like to look at it, showing how the commissioner of jurors not only acts in a judicial capacity but acts in his particular person — (Handing Vol. 2 of the Laws of 1894 to Mr. Marshall).

Mr. Marshall (reading from Volume 2 of the Laws of 1894) — This is an illustration of some of the acts: In the first place there is the provision as to the grand juries and petit juries and then, the commissioner shall before the day designated, file a list of grand jurors and petit jurors for the ensuing year. This shall be alphabetically arranged, etc. Books shall be open to inspection. Exemptions shall be in the same manner as authorized by the court. The names of those persons found to be exempt — also reports the ground of exemption — but this indicates of course that the duties of the commissioners of jurors are not merely formal. He has some proper functions to exercise and the very

reason why the commissioners of jurors system has been recommended is to avoid many evils which have crept into the selection of jurors in some of the counties in this State and which in some instances have resulted in actual scandal. There was a case in regard to the selection of jurors in this county which indicated the importance of having a well-defined system and a well protected system of jury selection; and the committee, recognizing this to be an important subject, one which has challenged the attention of the public for many years, have deemed it desirable to encourage the selection of jurors by means of commissioners of jurors and in order to avoid any claim or criticism of unfairness and to put the responsibility for the selection of a commissioner of jurors on the courts which have to deal with the subject of trial by jury, it has been proposed that that was a method which would meet with the approval of all who have the desire to prevent the obvious criticism which has heretofore been made with regard to the selection of jurors.

The reason why this method of selection has been deemed necessary, as stated by Mr. Wickersham, is that serious questions have arisen as to the validity of the appointments of commissioners of jurors, as instanced in the decision in the Brenner case in 170 N. Y., and as instanced by the illustration made by Mr. Martin a few moments ago as to the question that has arisen as to the legality of the appointment of a commissioner of jurors in Oneida county, and in Onondaga county respectively.

Mr. Austin — I would like to say a word or two about this proposed amendment of mine. In the first place it is intended to remove an objection which lodges in the minds of many upstate delegates who believe that this provision should not be mandatory; and, therefore, this amendment makes it permissive and provides that the Legislature may authorize the appointment of a commissioner of jurors in any county of the State. It also seeks to remove the objection that appointments may not now be made in certain counties constitutionally by supreme court judges and says in so many words that the appointment may be made by designated supreme court judges. Now, why was the word "designated" used in there, to which Mr. Marshall, or with which he finds fault? It was used simply because I recognized that different conditions exist in different counties. Now, for instance, take the county of Schoharie, you could not in that county properly say that the commissioner of jurors should be appointed by the supreme court judge residing in the county because there is none residing there, while in the county of Albany you might secure an excellent appointment by providing that the commissioner of jurors be selected by the supreme court judge residing in

the county. Therefore, I have used these words "designated justice" permitting the Legislature under varying circumstances, and in each particular case, to designate the judges which should make the appointment and only requiring that they must reside in the judicial district for which they are to make an appointment. As Mr. Barnes suggests the Legislature might very properly say that they shall be appointed by the appellate division judges of the district, which would be perfectly permissible under this proposal.

Mr. Lindsay — I had not thought to say anything on this subject, but it seems to me a matter of so vital importance that I want to express briefly my views. I think this question of a commissioner of jurors is one of the most important things in the judiciary article. Now, we have had experience with sheriffs and their relations to juries and matters of that sort, in the western part of the State, and in some instances the scandal became so great that it was absolutely necessary to have commissioners of jurors. The law under the provisions of which the commissioner of jurors is appointed in our county has brought the power to the supreme court judge residing in the county and the county judge and the county clerk. If this provision were such that the commissioner had to be appointed by a supreme court judge in the county then we cannot fulfill that law; we would be without a supreme court judge resident within the county. But what I want to call the attention of the Convention to is this: That this appointment of a commissioner of jurors should be in the hands of the court, the members of the court who sit in that county, or know about it; and, I am, therefore, very much in favor of the amendment as it now stands, so far as our districts are concerned, so that they can be appointed by the judges of the judicial district. Now, what is the reason for it? The reason for it is this, the judges who sit upon the bench and who reside in a judicial district are passing from county to county. If they find a county where they know that undue influence is brought to bear upon the appointment, or selection of jurors in that county, when they discover that fact, they are in a position to select a commissioner of jurors who will be under their control and see that that state of affairs is done away with. I cannot see where there is anything wrong in the judges of my judicial district appointing the commissioner of jurors. I know this to be the fact, that under the present system of the laws as they are applied and as they have been enacted that it has been wholly a political question. If there was a commissioner of jurors to be appointed in the county, persons in the Legislature who would control it would pick out three persons that would appoint the right parties and those would be the three persons who would be designated to appoint the commissioner of jurors. Now, that is all wrong. You have got it

right into politics again. I say that the commissioner of jurors should be entirely removed from politics, as much as the courts, and that if we are willing that members of the court of a certain judicial district shall sit in our county to try our cases, we ought to trust to them to uphold the purity of the jury system in that county.

Mr. Winslow — Mr. Chairman, I would like to offer an amendment of one word and have it incorporated in the amendment which I have already offered. On page 33, line 19, strike out the word " in " and in lieu thereof substitute the word " embracing ". So that the amendment with that change would read: " In a county in the first and second judicial departments by the respective Appellate Divisions of the Supreme Court in those departments, embracing those districts, and in a county in the other judicial department by the justices of the Supreme Court resident in the judicial district embracing such counties." The effect of the amendment, Mr. Chairman, would cover the peculiar situation to which I alluded when I introduced my first amendment. It so happens, that in the second department there are the two districts, the second district and the ninth district, the ninth district, embracing the five Hudson river counties, none of the justices of the Appellate Divisions residing in those counties. Now, Mr. Justice Mills, being on the Appellate Division bench, is a resident of Westchester county, but two other counties besides Westchester, of the Hudson river counties in the ninth district, would be affected by the proposed amendment, namely Dutchess and Orange, and in the case of those two counties, commissioners of jurors would be appointed by the justices if the amendment as proposed by the committee should stand — by the justices of the Appellate Division in the second department, none of whom reside in the counties of Orange and Dutchess, and in our case, only one of the justices of the Appellate Division resides in Westchester county; while, on the other hand, it would leave the first and second districts, the first district and the first department being the same, and the second district, taking in as you know, the counties embraced therein — in those two districts the appointments would be made by the justices of the Appellate Division, and in that way, at least, we would have some measure of home rule in the five Hudson river counties, embraced in the ninth judicial district, and not have to submit to the appointment of a county official whose salary would be paid by the county by a justice residing in one case nearly one hundred miles away, and having no interest, except as justice of the Appellate Court, in the appointment. Mr. Chairman, before I sit down, I would also like to call the attention of the convention and of the Committee to

the first part of my amendment which provides that commissioners of jurors now in office shall hold office until the expiration of their respective terms of office; so that none of these commissioners of jurors now in office, and performing their duties satisfactorily would be legislated out of office by the adoption of the amendment now proposed to the Constitution.

Mr. Weed — Can you tell what the terms of office of the commissioner of jurors now are? Is it not a fact that some of them hold during pleasure?

Mr. Winslow — I cannot tell you except from my impression. I think in the county of Westchester, that it is either one or two years that the present commissioner serves; one year, I think it is. In Brooklyn and Kings county I do not know.

Mr. Quigg — Take it in New York county. Don't you know that Mr. Allison has been serving ever since Mr. Gray's death, and he is serving yet?

Mr. Winslow — Yes.

Mr. Quigg — He has been there for some twenty odd years?

Mr. Winslow — Yes.

Mr. Quigg —And appears to have a life job?

Mr. Winslow — Yes. I know he is holding office, but what the tenure of his office is I do not know. I presume some of the gentlemen from New York can better answer that question than I.

The Chairman — The question occurs upon the amendment offered by Mr. Quigg. The Secretary will read the amendment.

The Secretary — By Mr. Quigg: Page 33, line 14, strike out the word "appointment" and insert in lieu thereof the word "election". Line 17, strike out the semicolon after the word "enumeration" and insert in lieu thereof a period. Strike out all the words in lines 17, 18, 19, 20 and 21 from the word "in" down to and including the word "county" in line 21.

The Chairman — Those in favor of the adoption of the amendment will signify it by saying aye. Those opposed, no. The amendment is lost. The next is the amendment offered by Mr. Winslow. The Secretary will read it again.

The Secretary — By Mr. Winslow: Page 33, line 14, after the words "section 28" and before the word "The" insert the words "commissioners of jurors now in office shall hold their office until the expiration of their respective terms". Page 33, line 14, after the word "shall" and before the word "provide" insert the word "hereafter". Page 33, line 18, strike out the word "departments" and insert in lieu thereof the word "districts". Page 33, line 19, strike out the word "departments", and insert in lieu thereof the word "districts". Page 33, line 19, after the word

" court " strike out the word " in " and insert in place thereof the word " embracing ".

Mr. Wiggins — Mr. Chairman, may we have that amendment divided. I am in favor of a part of it, but not all.

Mr. Wickersham — Mr. Chairman, I ask to have that divided. The continuance in office of all the commissioners of jurors, without knowing how many there be, or what their terms of office are, seems to me inadvisable, and I ask that the vote taken on the first be separate.

The Chairman — A division of the vote on the amendments has been asked for.

Mr. Winslow — Mr. Chairman, I ask for a rising vote on that question.

The Chairman — A rising vote has been asked for. The Secretary will read the first part of the amendment.

The Secretary — After the words " section 28 " and before the word " The " insert the words: " Commissioners of jurors now in office shall hold their offices until the expiration of their respective terms ".

Mr. E. N. Smith — Mr. Chairman, I wish to call attention to the fact that if the word " shall " is to be left in this may be a proper amendment, but if, as has been proposed in subsequent amendments, the word " shall " is changed to " may ", then the proposal by Mr. Winslow becomes unnecessary.

Mr. Lindsay — I would suggest in connection with that portion of the amendment that the next amendment be included as a part of it, because it uses the word " thereafter " and it should be included in this amendment.

The Chairman — A division has been asked for upon this first amendment and as it has been asked for it cannot be combined with any other.

Mr. J. L. O'Brian — Speaking simply from my recollection, it is my impression that the commissioners of jurors in Erie county has no fixed term and it seems to me that under this constitutional amendment that would be read to mean that he would be in office forever.

The Chairman — Those in favor of the amendment will please rise. The delegates will be seated. Those opposed will rise. The Clerk will announce the result.

The Secretary — Ayes, 47; noes, 36.

The Chairman — The amendment is carried. The question now occurs upon the second part. The Clerk will read the next amendment.

The Secretary — Page 33, line 14, after the word " shall " and before the word " provide " insert the word " hereafter ". Page

33, line 19, strike out the word "departments" and insert in lieu thereof the word "districts". Page 33, line 20, strike out the word "departments" and insert in lieu thereof the word "districts". Page 33, line 19, after the word "court" strike out the word "in" and insert in place thereof the word "embracing".

Mr. F. L. Young — Mr. Chairman, there is something wrong here; there is no appellate division of a judicial district that I know of.

Mr. Winslow — Mr. Chairman, if I may answer the gentleman's request for information. The amendment which I made just before the vote was taken, which I offered, struck out the word "in", corrects the English, so that the sentence will read, and as it is now before the Convention for vote, as follows: "In a county in the first and second judicial districts, by the respective appellate divisions of the supreme court embracing those districts, and in the other judicial districts by the justices of the supreme courts resident in the districts embracing such counties". I think that makes it all right as it reads now.

Mr. F. L. Young — Mr. Chairman, before that goes to vote, I would like to say that that amendment as offered by Mr. Winslow satisfied me and reaches the situation I was trying to reach, and if this passes I will withdraw the amendment.

Mr. Winslow — Mr. Chairman, before I sit down, I would like to turn to the word "hereafter" which was incorporated in my amendment. I think it is unnecessary, and I therefore ask that the word "hereafter" as an amendment in line 14, "The legislature shall hereafter provide" the word "hereafter" be withdrawn from the amendment and not considered as a part of the amendment.

The Chairman — If there is no objection that portion of the proposed amendment is withdrawn.

Mr. Franchot — As I have just come in the room I would like to have some explanation of this amendment. As I read this matter it refers to an appellate division in a judicial district, which is a contradiction in terms.

The Chairman — The question occurs upon the adoption of this amendment. Those in favor of its adoption will say aye. Those opposed, no. The amendment is adopted. The next is the amendment offered by Mr. Wiggins. The clerk will read the amendment.

The Secretary — Page 33, line 15, strike out the word "of" at the end of the line; page 33, line 16, strike out the words "upward of" and the word "inhabitant".

Mr. Wickersham — And insert the word "exceeding".

The Secretary — Page 33, in line 14, strike out the word "it" and insert in place thereof the words "the Legislature".

The Chairman — The question occurs upon the amendments

just read. Those in favor of their adoption will signify by saying aye. Those opposed, no. The amendments are adopted. Mr. Young withdraws his amendment.

The Secretary — Page 33, in line 14, strike out the word "shall" and insert in place thereof the word "may". In line 15, strike out the word "every" and insert in the place thereof, the word "any".

Mr. Wickersham — Making it permissive. I hope that won't pass.

The Secretary — Strike out the words "having a population of" in line 15, and all of line 16, and the words "preceding State enumeration" in line 17.

Mr. Deyo — Mr. Chairman, the amendment offered by Mr. Smith simply makes this permissive and makes it applicable to all counties of the State regardless of population. There is more difficulty arising in some of the small counties than in the large counties with reference to jurors. I know of one county in the State where a wager was laid by a man that he could name every juror who would be drawn to serve at the next term of court. He made out a list. It was placed in an envelope in the hands of an ex-county judge of the county. The full panel of 36 jurors was drawn and on comparison it appeared that he had guessed correctly to a name. That county had less than seventy-five thousand.

The Chairman — The question is on the adoption of the amendment just read. Those in favor will rise. Those opposed will rise. The Clerk will announce the result.

The Secretary — Ayes, 49; noes, 34.

The Chairman — The amendment has been adopted.

Mr. Austin — I withdraw my amendment.

The Chairman — Mr. Austin withdraws his amendment.

Mr. Austin — But I do think there should be inserted the words "which shall be a county charge" after "compensation".

The Chairman — Does Mr. Wiggins withdraw his amendment?

Mr. Wiggins — Yes. The feature which I had made it permissive, and that amendment which has been passed, by Mr. E. N. Smith, adopts the idea I had. It is withdrawn.

The Chairman — Mr. Austin and Mr. Wiggins withdraw their amendments.

Mr. Austin — I move to insert after the word "jurors" in line 22, the words "which shall be a county charge".

The Chairman — Any objection to that?

Mr. E. N. Smith — I agree with the suggestion of Mr. Austin that the charge of commissioner of jurors should be a county charge. The question is merely one of phraseology. I offered an amendment there on that subject alone, which is at the desk.

The Secretary — By Mr. E. N. Smith: Strike out all of line 21 after the period, and all of lines 22 and 23, and insert " The Legislature shall define the duties of commissioners of jurors, fix their terms of office and their compensation which shall be a county charge."

Mr. Austin — I withdraw mine.

The Chairman — Those in favor of the adoption of the amendment just read will please signify by saying Aye. Those opposed, No. The amendment is adopted. The question now occurs upon the adoption of Section 28 as amended. Those in favor of its adoption will signify by saying Aye. Those opposed, No. The amendment is adopted.

The Chairman — Section 29.

The Secretary — Section 29. No person qualified to serve as a juror shall be exempt from jury duty except a person actually employed in the service of the State or of a civil division thereof or of the United States, a soldier or a sailor of the United States army or navy, a member of the National Guard of the State or a volunteer fireman, now serving as such or heretofore honorably discharged, a practicing physician or surgeon and such other persons as the judges and justices authorized to make the civil practice rules may by such rules provide.

Mr. Latson — Mr. Chairman, I am very greatly interested in the provisions of this section, and my interest has been aroused by a great number of communications which have reached me from the Adjutant-General of the State, the commanding officers of the National Guard and various members of the National Guard as well as the commanding officers of the national militia. The provision in so far as it affects the National Guard is a departure from uniform provisions of our laws for more than a century. I have been at some little pains to look up this question and I find that as far back as 1801, the Guard was recognized as entitled to exemption from jury duty in consideration of the service rendered by members of the Guard. That was re-enacted in 1813, and in the subsequent provision of 1829 found a place, and so on down and down until it took its form of Section 1030 of the Code and later in 1909 it was taken out of the Code and put in the Judicial Law where we find it to-day. I understand that the Judiciary Committee have been prompted by adherence to the principle that every man ought to recognize his obligation to perform some duty to the State. Surely he ought to be called upon to perform some duty, but not every man can perform every duty, and it is perfectly fair to recognize the performance of one duty by one man and some other duty by another man. That thought is emphasized in this connection because these men

have entered the service substantially under a contract. The law gave them an exemption, and it is not fair to take away that which they feel they had a right to receive under this provision.

Mr. Franchot—As I read the provision, it protects those particular members who are now serving.

Mr. Latson—Will the Committee of the Whole bear with me a minute while I read the language of the section: "No person qualified to serve as a juror shall be exempt from jury duty, except a person actually employed in the service of the State, or of the civil division thereof, or of the United States, a soldier or sailor of the United States army or navy, a member of the National Guard of the State, or a volunteer fireman now serving as such, or heretofore honorably discharged, a practicing physician or a surgeon and such other persons as the judges and justices authorized to make the civil practice rules may by such rules provide."

Mr. Wickersham—If the gentleman will read once more, he will see the phrase "a member of the National Guard of the State or a volunteer fireman" is separated by commas from what precedes it and what follows it and then follows "now serving as such or heretofore honorably discharged"—

Mr. Latson—It does seem that the intention of the Committee was to meet this in the language such as General Wickersham has indicated, but still I say it is a departure from the condition that those who enlist accept, that when they have their discharge they would have their exemption because this does not refer to those honorably discharged—

Mr. Wickersham—I simply wanted to correct the interpretation of the gentleman, and I want to make clear the Committee's intention as to the language used.

Mr. Latson—I do not place your interpretation on the language. My first idea was to submit to this Committee of the Whole an amendment which would touch upon the National Guardsmen and the Naval Militia, but the more I have thought of it, and the more I have talked with some of my colleagues in this Convention the more I feel that this entire section should go out of this judiciary article. Therefore, I move the following amendment.

The Chairman—Mr. Latson offers an amendment which the Secretary will read.

The Secretary—By Mr. Latson. On page 33, strike out lines 24 and 25, and on page 34, strike out lines 1 to 7, inclusive.

Mr. Quigg—Mr. Chairman, I offer an amendment.

The Chairman—The clerk will read the amendment offered by Mr. Quigg.

The Secretary — By Mr. Quigg. On page 33, line 25, strike out all after the word "employed" and insert the word "as;" strike out line 1, on page 34; strike out all after the comma after the word "navy" in line 2, page 34, down to and including the word "surgeon" in line 5.

Mr. Quigg — Mr. Chairman, the difference between Mr. Latson's proposition and mine, is that Mr. Latson would leave all these thirty odd classes of exemptions that now exists, as they are, so that we are going to have just as bad a class of jurors as we ever have had, with power to the Legislature to make it worse, as no doubt the Legislature will make it worse since that is what they have been doing for the last fifty years. My proposition in contradistinction to his is to provide that there shall be no exemptions whatever from jury duty except to soldiers and sailors actually engaged in the employment of the United States. I feel certain that I shall get my own vote for it.

Mr. Standart — Mr. Chairman, I am opposed to all exemptions and I hope my suggestion which is halfway between that of Mr. Latson and that of Mr. Quigg will be acceptable.

The Chairman — The clerk will read.

The Secretary — By Mr. Standart. Substitute for section 29, "no person qualified to serve as a juror shall be exempt from jury duty."

The judges and justices authorized to make the civil practice rules shall, however, by such rules provide that a person actually employed in the service of the State or of a civil division thereof or of the United States, a soldier or sailor of the United States Army or Navy, a member of the National Guard of the State or a volunteer fireman, now serving as such or heretofore honorably discharged, a practising physician or surgeon, may be exempt from such jury duty upon filing with a designated official a request for such exemption and proving his right thereto."

Mr. Barnes — Mr. Chairman, I suppose the Convention will see how closely this subject is related to the one upon which we have passed unfavorably. In the first place, the Judiciary Committee has modified the method which was suggested by the Committee on Legislative Powers for the granting of privilege by inserting in the Constitution what classes should be exempt from jury duty and taking from the Legislature all power of increasing the number of classes, but substituting an entirely new authority, namely the Court of Appeals and the Appellate Division, which now are to be granted also the power of giving privilege.

It would seem, therefore, and I have prepared an amendment to this clause of the bill, that to start in with a new power to grant privileges is infinitely worse than the condition we have to-day, and

therefore the last part of the paragraph certainly should be changed. If you are not willing to take the principle that all privilege should be granted in the Constitution, but should be partly in the Constitution and partly in the Legislature do not let us open a third avenue. Why not do as this Committee on Judiciary has done, be perfectly square about it and name in the Constitution the exemptions that you believe to be right, ask them to be voted by the voters and deny to the Legislature the power to extend the number absolutely? You have then laid down an absolutely clear and positive rule adopted by the people themselves in their Constitution as to who is and who is not exempt. In this connection I want to call your attention — and I regret very much that, although I have sent to all the commissioners of jurors for statistics, the figures are not here and I was only able to get those covering the city of Albany — to the fact that there are in this city 28,000 male electors. There are 22,000 individual holders of real estate. Of that number about ten per cent is non-resident, leaving at the lowest possible estimate of persons eligible for jury duty under the provisions of the law ($150 worth of property), 18,000 males in this city. The list contains less than 3,000 under this excellent system which has been praised in this Convention and which was established in this county over twenty years ago. Therefore, there are 15,000 men eligible for jury duty who are not on the lists. It seems to me that this is not an unusual condition. Of course, the number of owners of property in relation to the total number of voters, is very much larger here than it would be in New York city, or Buffalo, but about the same as in the smaller or average size cities of the State, and I have found that in the course of the year about twelve hundred men are drawn for jury duty in this county. The result would be, if these 15,000 were on the lists, a man could not possibly be drawn, on the law of averages, more than once in fifteen years, and it would seem that a citizen of this State, from the time he is twenty-one to the time he is seventy years of age, forty-nine years, might serve three and a half times on a jury without disturbing his health and his business; and it seems to me that when all these classes ask for exemption from jury duty and attempt to influence the members of this Convention by special interests coming to them to have this exemption, if you will put this in the Constitution and deny to the Legislature the power to grant any more exemptions you have made an intelligent proposal to the people of the State. It has been stated to me that the people now exempted would not vote for this Constitution if we did not leave it to the Legislature. If I were exempt myself — I have never thought about it, there is no reason why I should not be on the list, no reason why any man should not be

on the list — I would want it decided that way. And I raise the point about the militia, which is a debatable question. It seems to be an implied contract on the part of the State, but I am confident that a little courage, a little action that does not appear to be popular, a little reality on such questions as this, would arouse more support for the Constitution than the constant bending of the knee to every proposal that comes along.

Mr. C. Nicoll — Mr. Chairman, I think this section is impolitic, obscure and unwise. It is unwise because it changes the status to the disadvantage of a great number of people. Mr. Barnes has spoken of the privilege of exemption from jury duty. That privilege rests on two theories. The first theory is that if a man's occupation renders it difficult or hard for him to serve on the jury, for that reason he is excused. The second principle is that there is some higher duty to the State than serving on a jury and if a man is willing to perform that higher duty then he should be excused, not as a matter of privilege, but as a *quid pro quo* for his service to the State in other ways. Now, curiously enough, I looked up this question the other day and in the first class of cases, as long as Mr. Barnes has brought up the subject, the question of privilege, on account of occupation in which men are engaged, the very first law extending any such privilege was a law passed extending exemption from jury duty to the employees in mills in Albany county. The exemption from jury duty of the National Guard and of the Army and Navy of the United States, has always been on the statute books of the State of New York and was so, I think, from Colonial times — it appears in the first revision of the laws of 1801. Now, I think this section is obscure because in the first place "the General" as they call him, has overlooked the Naval Militia entirely.

Mr. Wickersham — Mr. Chairman, I would be very glad if the gentleman would address me as "Admiral" on this question.

Mr. C. Nicoll — I think I shall be obliged to address him as "Citizen." He has also forgotten the marines in the navy. It is further obscure because it apparently continues, in one sense it continues the exemption, while a man is employed in the service of the State. Certainly a soldier is employed in the service of the State; and in the next place, it qualifies it to such as are now serving or have heretofore been honorably discharged. The apparent purpose is that those who are now fortunate enough to be in the National Guard, or those who have been honorably discharged heretofore, should be exempt. According to the view of the committee it make no difference, whether under present laws, a man is entitled to exemption or not. A man may enlist to-day and be honorably discharged to-morrow and may have never held

a rifle in his hand or attended a drill, and yet he is exempt from jury duty, if he is honorably discharged. It will increase enormously the exemptions from jury duty in the National Guard, because now in order to obtain exemptions a man has to serve five years in the National Guard, and five successive years as a fireman; but here he does not have to serve any time at all. All he has to do is to enlist and apply and obtain his discharge and then he is free for the rest of his life. Now, I think it unwise. We are sitting around here and discussing vital questions, questions of vital concern, as to the jurisdiction of justices of the peace and whether a commissioner of jurors must be elected or may be appointed in one county or another. What is a Constitution for? The United States Constitution puts it tersely in the preamble of that instrument. It says "in order to provide for the common defense." How trivial in view of the matters going on in Europe, do our actions seem here if we have not secured the first duty of government, "to provide for the common defense!" We spend our time here droning over little matters of exactly how these things shall be done and abroad there is a conflagration going on which threatens to engulf this country. The President of the United States has let it be known, in a statement by him, that we must depend for our defense on "a citizenry trained and accustomed to arms." So far neither the arms nor the training have been provided in large measure. But here is a mass of men trying to fulfill the obligations of citizenship and willingly undertaking the tasks which the government makes difficult for them. Instead of depriving these men of rights, we should acknowledge that they do a service for the State, that they are a representative and a vital part of the State, and should promote service in the National Guard in every way and not hamper or destroy it.

Now, there is a popular theory among some of the gentlemen on the Judiciary Committee — I don't know how many of them have served on a jury or how many have served in the National Guard or Naval Militia, but there is a popular theory that the sporting instincts of Young America now find full scope, and practically their only scope, by enlisting for a term of three years in the National Guard. Gentlemen, that is not so. There was a time gone by when service in the Guard meant a series of pleasant entertainments, of coming up here to Albany for the inauguration of the Governor and attending an enormous "booze fight" at the Armory and then returning to New York or some other part of the State. That is not the case to-day. These men are working hard. At the same time there have grown up, besides the National Guard, as other means for relieving the sporting instincts of young men, various other associations where military discipline and the rigors

of military training are not necessary. The Y. M. C. A. and other associations like it now receive a great many men who years ago found a mild relaxation in the then rather social activities of the National Guard. But to-day we want to build up this organization. We want to make it stronger at all times. Particularly, we want to reward those who do undertake training in times of peace because on them the safety of the republic must rest in times of war. I second Mr. Latson's amendment.

Mr. Byrne — I am so accustomed to agreeing with most everything that Mr. Wickersham says that it was in that frame of mind that I read this section without a thought of seeing anything about the National Guard; without an idea that there was ever a thought of taking away from those who had served, were serving, or were going to serve in the National Guard any exemption which they now have. Now, Mr. Nicoll has covered the ground pretty well and I expect to speak on a subject which is rather closely allied to this one. I am waiting anxiously for it. I know all of you have your pets and that pet's mine. It is the Spanish-War question.

I do not know in just what form it is going to come in, but I would like to say this, gentleman, now. It is hard enough to recruit at the present time, to get men to join the National Guard. And, as Mr. Nicoll well says, it is not any easy thing nowadays. It is mighty hard work when you go off to these different camps. You do not have any pleasant time, and the reason for it is quite apparent. I do not want to go too deep in this because I am touching on the other subjects which I have mentioned.

We know the state of this country; we know the spirit of a lot of people in it. We are fast becoming what was said of England once, "a nation of shopkeepers." I am reminded of what Kipling said:

"It's Tommy this and Tommy that
And 'Chuck him out, the brute.'
But it's 'Savior of his country'
When the guns begin to shoot.

"It's Tommy this and Tommy that
And anything you please.
But Tommy ain't a bloomin' fool,
You bet that Tommy sees."

Gentlemen, the men in the National Guard are not foo's. I think they have a few friends in the State and I say that I think it will be the most unwise thing you could do to put such a provision into the Constitution. I hope that Mr. Latson's amendment will be adopted, to strike out the entire section.

Mr. Clearwater — I have a far higher opinion, sir, of the spirit and the patriotism of the flower of our youth in this State than has been expressed either by Mr. Nicoll or by Mr. Byrne. I do not believe, sir, that the flower of our young manhood will for a moment hesitate to discharge that duty which every patriot owes to his State and country if they are asked to discharge another public service and serve upon a jury. I am no longer young, sir, but I have a very much higher opinion of the spirit of our young men than has been expressed upon this floor to-day. Now this matter of exemption from jury duty, sir, is secondary in this State. Five years ago, at the request of the State Bar Association, happening to be the Chairman of its Law Reform Committee, I investigated this subject. To my amazement, and I fancy it will astound every man upon the floor of the Convention, I found that only one man out of every 117 in this State was listed for jury duty in all the counties of the State. That is scandalous. The proper administration of justice, sir, is the most important of the temporal affairs of men and justice can only be properly administered by an honest, learned judge and an honest and intelligent jury. And if we are to exempt by constitutional provision or by legislative enactment the very best men in the State from service upon a jury, we cannot expect that proper administration of justice which is the right of every citizen. These privileges have grown up by degrees. The original exemption from jury duty was confined to members of the national guard, clergymen, lawyers and firemen in active service, because in the early days there was no paid fire department except in the very largest of our cities. I think there was none exempt in New York city. Then came the exemption of honorably discharged members of the National Guard and men who had served five years as volunteer firemen. Now, we have, sir, 32 classes of people in this State who are exempt from jury duty. Among those people of great privilege — and it is unnecessary for me to repeat here that I am a foe of privilege — among those enjoyers of great privilege are horse doctors, embalmers, undertakers, dentists, people who work in a cotton mill, in an iron mill or in a glass factory, superintendents of cemeteries, and a vast variety of classes which it would take me a number of minutes to read from the provisions of the Judiciary Law. That is ridiculous. Why should not a cardinal and a bishop, why should not a lawyer and a physician, why should not every man render to the State that service? There is not the slightest reason in the world; not the remotest. If every man who is liable for jury duty, under the abolition of exemptions, were listed for jury service and a proper system of rotation were observed, even under the existing statutes in this State, a man

would only be called upon to serve upon a jury once in nine years and three months.

Surely, sir, every citizen can devote at least his one term of court once in nine years and three months. He ought to be able to do it in one-third of that time, with a proper system of impanelling jurors, with an absolutely impenetrable abolition of these many exemptions, brought about by degrees. And this is the way they have grown up. Not by a great recognition of public service or a public necessity for this exemption; but the association of horse doctors came to the Legislature and asked to be exempted from jury duty. An urbane and conciliatory Legislature granted that amendment. Dentists thought they would like to join the exempted classes, and the State Association of Dentists came here and got the same exemption. Cemetery superintendents thought it would be a fine thing for them to come, and recently they have arrived here and been exempted. Embalmers and undertakers, and all this long list here have procured this exemption because they could exert sufficient political influence and pressure to get it, not because the people of the State rose up in recognition of their vast public service performed or to be performed to grant that exemption. Now, let us have a proper administration of justice. Let every man, every citizen, except, of course, those engaged in actual military service, those engaged in the various fire departments, who may be called upon at any time to save life and property, and those to whom the State owes the honorable obligation of exempting them because in the past it has promised to do so. I do not believe, sir, in the abrogation of any contract the State has made, or any promise the State has made, or anything the State has held out as an inducement. I am entirely of the opinion that an honorable obligation is just as much to be observed as a legal obligation, and more so, because always you can enforce a legal obligation, and many times you cannot enforce an honorable obligation; and an honorable man, an honorable community, an honorable State should observe to the very letter its honorable obligations and keep its actual and its implied promises. With all of that there should be no interference. But for the future, sir, all this class of amendments should be abolished, and we should have people of the State of New York — if they have not that feeling now, then let them get it; let their sons grow up with the idea that it is a duty to serve upon the jury. I am sure the predictions and the maledictions and predictions of maledictions regarding the deprivation of exemption of men who may hereafter become members of the National Guard are absolutely chimerical. You will find the young men of the State of New York in the future, sir,— they always have been from the very days of the

Provinces and the Colonies — always willing to regard military duty as the highest duty the citizen owes to the commonwealth that protects his life and property and the life and property of his ancestors.

Mr. Barnes — Mr. Chairman, will my amendment be read, please? It was not read.

The Secretary — By Mr. Barnes. Page 34, line 4, after the word "discharged," insert the word "and". Page 34, line 5, after the word "surgeon," insert a period. Strike out the remainder of said line and strike out all of lines 6 and 7 on that page.

Mr. M. J. O'Brien — Mr. Chairman, this is perhaps the first time in the four months I have been here that I have not been on the same side with my distinguished colleague, Judge Clearwater. And it may be equally said it is true of the work of the Judiciary Committee. I have thought that their work was splendidly done, and I have been in accordance with them on practically every measure. But they do say that even Homer nodded, and here is a case where I think the Judiciary Committee have failed, as I see the subject, to treat it as it deserves to be treated. Now, I might say for the benefit of the gentlemen here that I have got a very extreme view which I am not going to advance, and which I have not attempted to enforce on others, because I am sure they would not agree with me. The time has not yet come. But my thought is that in the future, in the development of our judicial system, the time will come when the force of my present thought may have expression. That is one of those vain things that men cherish to themselves, which may be realized or not. I think that this is a subject that is peculiarly one for the Legislature. You take, for instance, the question of these exemptions as they have developed. The one to the lawyer always existed, so far as I know. The one to the clergymen, and so in turn as you go down this list in the Judiciary Law — take in the city of New York, you have a clergyman or minister of religion, practicing physician, attorney and counselor, professor or teacher in a college, holder of an office under the United States, consul of a foreign country, captain, engineer or other officer actually employed upon a vessel, superintendent or engineer employed by a railroad company, a grand juror or a sheriff's juror for the year, any officer noncommissioned, a person who has been honorably discharged from military forces, and a person who has been performing the duties of a fireman in a fire company, and so on, down this list. Now, let me say that Mr. Barnes has touched on one phase of it, that in connection with those who are subject to jury service. And you can see that as it has grown up that that is so; and there is great

force in one of those suggestions made by Mr. Quigg that out of this process of elimination you are getting to the point where the best men suited to that sort of work are not available for reasons which I think are perfectly proper, because I agree in all these exemptions. I think a clergyman who is giving his time in ministrations to the soul is just as much entitled to be protected from jury duty as the surgeon or physician who is attending to the body; and so you can come down and take the man who is serving on a sheriff's jury, or on the grand jury, why shouldn't he be exempt? He is performing a service for the State.

The difficulty, however, in this whole question is that we, as lawyers, are magnifying the necessity of a jury in so far as it is connected with the administration of law. We magnify the office of juror. In our courts, as you know, we have the law side and the equity side. My view, and as I suggested, if it was carried out, I would have no juries in civil cases; I would have juries only in criminal cases. The reason for that is the results would be better and the expense would be less to the taxpayers of the State. If we do away with these exceptions and the large lists are made up, for instance, as I understand it, in the county of Albany there are some twenty thousand names on the list, if all the exemptions are to be removed, what would be the result here and in cities like New York and the other large cities of the State.

Mr. Barnes — I said three thousand on the list out of a possible twenty thousand that should be there.

Mr. M. J. O'Brien — And with the result, as I said, it was six out of twenty.

Mr. Barnes — No, three.

Mr. Dykman — Mr. Chairman, may I ask the gentleman what the duties are of a sheriff's jury in New York county?

Mr. O'Brien — Inquests in lunacy proceedings —.

Mr. Dykman — I mean the serious duties.

Mr. O'Brien — There are various duties, and beneath them all they have an annual dinner.

Mr. Dykman — That is the serious duty?

Mr. M. J. O'Brien — Surely. Now, gentlemen, it seems to me that this section might very well be left as it has been in the past, to the Legislature. The attempt to discriminate against classes and to grant privileges to some classes, if it is a privilege and carried to the end, would be a great mistake. It seems to me that the force and effect and the very grave consideration of the entire jury system should be left to the Legislature, and that the Legislature is in a position to grapple with it; and I think, as I have said, the difficulty here is that we are magnifying the importance of the jury, because most of us here are lawyers and we are thinking of

their relation to the administration of justice. There are many other things demanding the time of these men who have been exempt, a list of which I have already read here, and I think they ought to be left to follow their vocations, for they are rendering a service to the State, each in his own way. It is not minimizing their patriotism; it is not lessening their love of country. These men are engrossed in a great service. They should not be taken from their vocations and enter upon the work of serving upon a jury, and I am strongly in favor of striking out this entire section.

Mr. Wickersham — Just a word because I am very anxious that we should finish this judiciary article before we rise this afternoon and I won't detain the committee but one moment. In considering, as the committee has done, the administration of justice, our attention was necessarily directed to the great list of exemptions from liability to jury duty. There is no doubt that there are a great many perfectly valid exemptions. There is no doubt that in some communities the existence of these exemptions very seriously interferes with getting an intelligent, competent jury at the trial term.

We have addressed an inquiry to the judges of the Supreme Court throughout the State asking for an expression of their opinion on the subject. Twenty-four, 27 out of 43, answered recommending the abrogation, or the very serious limitation of the exemptions. We propose in our report two things: We propose the establishment of jury commissioners and we propose a serious reduction of the exemptions, and devolving upon the judges who should be entrusted with the forming of the civil practice rules, the duty and power of prescribing what additional classes, if any, should enjoy that privilege. In so doing, we realize very fully, the prejudice that would exist, and the opposition which would arise on the part of a great many of these classes who are now enjoying these privileges. Some of them, some of the most clamorous of them, were not content with the enjoyment of the privilege of immunity from jury service, but were seeking to break into the civil service in addition. The largest organizations of them, those who are claiming exemption under the Constitution from jury service, were very importunate before committees of this body, not only to continue their privilege of exemption from jury service, but also to secure a special privilege under the civil service, or with respect to promotion and retention in service. Perhaps that very importunity led the members of the Judiciary Committee to feel more strongly in their determination to lay the subject before this Convention. It is a subject which, it has been said, should be dealt with by the Legislature. I recognize that it is questionable whether it should be dealt with in the Constitution. I was very

much in hopes that the section preceding this should be adopted substantially as it was proposed, so as to make the commissioner of jurors appointed by the judges compulsory in all counties having a population of 75,000 or upwards. I think that provision has been considerably impaired by the amendment which the committee in its wisdom adopted a little while ago. Nevertheless, it still remains, I think, a marked advance over the present condition of the law and the Constitution. But, there is a difference of views here as to whether or not it should be dealt with in the Constitution, and that is a question which every member must determine for himself. I think we have spent enough time in discussing it, and I hope we will come to a vote upon it without any further discussion.

Mr. Griffin — Mr. Chairman, I offer the following amendment.

The Secretary — By Mr. Griffin. Page 34, lines 3 and 4, after the word "firemen," line 3, strike out the words "now serving as such or heretofore honorably discharged."

Mr. Griffin — Mr. Chairman, I trust that the members of this Convention will bear with me for a few moments. As I happen to be one of the men who has given services to this State and to this country, I feel after having had an experience of upwards of thirteen years (twelve years in the National Guard, and somewhat less than one year in the United States service) that I might be qualified in a humble way to say a word upon this matter of exemptions. I agree perfectly with Judge Clearwater, that the promise of exemption to the flower of our youth will not induce them to enter the National Guard. I believe that the young men of our State have a higher and nobler sentiment of duty than to be bribed into the performance of their military obligations. I believe that the American youth have felt, as I have felt, that it was an honor to serve our State and an honor to serve our country. I believed that it was a privilege to be proud of, and I think that the American of our State feel likewise. But, nevertheless, there is a practical side to this question. At first, I could not make out just what this provision meant. Reading the section, I thought that it was intended to exempt members of the National Guard from jury duty while serving in the National Guard, but I find that the provision as framed will not have that effect. Now, look at it practically. What does this provision do? You deprive the enlisted men of the National Guard to-day, fifteen thousand men, of the so-called exemption from jury duty. Fifteen thousand of them, and you open the door and put in the exempt class a hundred thousand men of those who have served in the past.

Mr. Wickersham — It does exempt those who are in the Guard to-day.

Mr. Griffin — General, do I understand you to say that if this provision goes into operation, men who are serving in the National Guard will be exempt while they are serving in the National Guard; that is, if a man joins the National Guard next year, after this Constitution is adopted —

Mr. Wickersham — I said now serving.

Mr. Griffin — Now serving, and that is the reason why, General, you are exempting a hundred thousand men who have seen service in the National Guard in the last twenty years, perhaps, in this State; you are giving them the exemption, while you are closing the door to the privilege of exemption to perhaps fifteen thousand men who will be in your service, the service of this State next year.

Mr. Wickersham — It was the thought of the Committee that as to the hundred thousand you refer to the State owes a sort of a moral obligation to them. They entered at a time when there was an exemption held out, and I think that should be regarded, whether legally binding or not, as morally binding on the State.

Mr. Griffin — I don't believe, General, that it is binding.

Mr. Wickersham — That was the thought, I said.

Mr. Griffin — I don't believe there is anything in that at all. I know the idea of there being an exemption in the law to a member of the National Guard never affected me whatever when I joined the National Guard, and I do not want to hold the State, so far as I am concerned, and I don't believe that of the hundred thousand men who have received honorable discharges from the State of New York in the last twenty years, there is one of them that would care to hold the State to any such implied contract. I think as a practical proposition it would be far better to grant the exemption to the men in the National Guard while they are serving in the National Guard, and to remove the exemption as to those who have rendered their service in the past. There is no excuse for giving the exemption to the men who have rendered the duty in the past. They don't want it. They are available. As Judge Clearwater says, the men who rendered the State a duty in the National Guard are now willing to render jury duty. But with the men that are in the National Guard to-day, I don't mean to-day, but when this Constitution goes into effect. Take the young men who go into the Guard, after the first of next January. They take an oath to serve the State for three years. Those men ought to be exempt from jury duty while they are serving in the Guard because it would produce a very awkward situation, if a man were called out on strike or other duty, to be called at the same time for jury duty. I think, as a consideration to the young men that join the National Guard, you should say to them: "Now, during the

time that you are serving in the National Guard you will be exempt from jury duty." But as to holding out an exemption to those men who have served in the past and who are free to give jury duty, I think it is ridiculous and absurd. I think, with all due deference, that the Judiciary Committee ought to reconsider that proposition and give the exemption to the men while they are in the service.

Mr. Westwood — I shall not occupy the attention of the Convention more than a moment or two, but it seems to me that it is a question sufficiently far-reaching to suggest the importance of deliberation. I shall propose this substitute: "No classes of person shall hereafter be exempted from jury duty in addition to those now exempted by law."

Mr. Chairman, I think perhaps we magnify the proposition that has been made, that we are not getting good enough juries on account of some thirty odd classes of exemptions. Whether we magnify that or not, we should not minimize in our minds the way in which the proposition as reported by the Committee will be apt to be received by the people. We have accomplished so much of general good in the Convention, and hope to accomplish so much more, that it certainly ought to suggest itself as inexpedient for us to seem to deprive any classes or any individuals of any rights or privileges — I do not care what you call them,— which they have been accustomed to receive, and the possession of which does not seriously impair the administration of justice. What do you say to the proposition that all of the clergymen, the ministers of religion throughout the length and breadth of the State will be inquiring about this when it comes to November? They will answer that what appears to be a perfectly innocent exemption running to them has been taken away from them. What do you say to the professors and the teachers in all of the colleges?

Mr. Wickersham — Don't you think it would be a great thing if all the teachers and professors could serve on a few juries?

Mr. Westwood — I do. If I were reconstructing the system of government I would not have any exemptions either from taxation or jury duty. A week ago to-day, or to-morrow, I submitted for the consideration of the Convention a proposition that there should be no exemptions from taxation and I was met with the very earnest argument, which is probably so — I grant that I did not expect the majority of the Convention would adopt my proposition, but I wanted to have on the record for future generations the first or second or third step, whatever it may have been, toward that ultimate goal — it was stated then, reading from the Record on page 2132: "If we were here starting a new government, that policy would and should be adopted. But the system

of exemption as it exists now has existed so long and has become so thoroughly grounded in our system and so many rights have grown up, built upon that system, that we cannot root it out without grave disturbance and grave trouble." Now I suggest that those same remarks are clearly applicable to the situation in relation to jury exemptions. It does not suggest so large a question. It is not so far-reaching, but it reaches far enough so that we ought seriously to contemplate whether it is advisable to change the existing system. We should, however, put the bars up beyond which the Legislature may hereafter not go, coupled with the provision that it shall be within the power of the Legislature at any time to cut down the number of exemptions and to make the classes smaller. There is this other idea. Do you realize that today, if we adopt this proposition of the Judiciary Committee, we will by constitutional enactment grant exemptions to certain classes of individuals? Mark you, we put it in the Constitution that they shall forever have the right of exemption, so that it will be impossible at any future time to change that. We make it inflexible, and I sometimes doubt —

Mr. Marshall — In the form of amendment which you propose do you not impliedly recognize existing amendments? Would it not immediately be said by the Legislature that the Constitutional Convention has indicated its willingness that the present exemptions should be continued? In other words, we read into the Constitution that thirty-two classes of exemptions are continued.

Mr. Westwood — I do not agree with Mr. Marshall that I have constitutionalized the present exemptions, but if I should be wrong, and he right, it is easy enough to change it, and it is done by the addition of the following eight words "but the legislature may abridge the present exemptions," or that in substance, which I shall incorporate in my proposal. There is this further proposition, that if you propose to constitutionalize exempt classes, there is a grave question whether the selection has been made aright. I agree with all that has been suggested in respect to getting better juries but let us do it in a way that will not arouse the animosity of thirty-two classes, who are, and who have been, accustomed to enjoy these rights. I, therefore, send this amendment to the desk: "Substitute for section 29: No classes of persons shall hereafter be exempted from jury duty in addition to those now exempted by law but the Legislature may abridge the present exemptions."

Mr. Clearwater — Mr. Chairman, is this a substitute or an addenda to the Proposed Amendment,— which?

The Chairman — A substitute.

Mr. Stimson — Mr. Chairman, I venture to say that I hope the amendment offered by Mr. Latson will pass. I say it with fear and trembling in the presence of my admiral and general-in-chief.

Mr. Wickersham — Mr. Chairman, I have no objection to Mr. Latson's amendment.

Mr. Stimson — I say it with a sense of shame because I realize the abuses that have crept in under the present weakness of legislative action in treating this subject, but I do not think that it is logical to substitute a series of constitutional exemptions in place of those that have been granted by the Legislature, and I think that it is highly inexpedient to divert the wrath which may be excited by the repeal of the legislative exemptions over on to the body of this Convention and its work, in the light of what may be aroused by that repeal. I am one of those who believe that this Convention is going to propose an important work and is going to leave the voters of the communities to pass on that work, and I realize the truth of what has been said here on this floor in reference to the animosity that will be aroused in the various bodies of men, whose exemptions, crystallized by long custom, will be removed by this amendment, particularly if we seek to substitute something else in its place. I think it is a matter that ought to be treated by the Legislature, which has been treated rather badly by the Legislature, but I do not think that this way of correcting that abuse will be either effective or safe for the future work of this body.

Mr. R. B. Smith — I must reply to the statement that the Legislature has treated this subject badly. Let me say that during my experience in the Legislature repeated applications have been made by different classes of people for exemption from jury duty and in almost every case they have been rejected. From an examination of the classes of exemptions, which I have carefully made and am perfectly familiar with, I believe there is not a single case which has an exemption that it ought not to have and that should not be continued.

Mr. Wickersham — What, in his opinion, is the reason for exempting people employed by the day or month or year in glass factories or iron works?

Mr. R. B. Smith — That is probably the one class that is most subject to criticism but it is also one of the oldest. Let me say further that not five per cent. of those employees are eligible for jury duty in the State of New York. We have no glass factories. How many cotton mills have we? How many woolen mills, except in Oneida and Onondaga counties?

Mr. Quigg — Does not Mr. Stimson suggest the proper reason, that, if we should not continue the exemption, they might beat the budget?

Mr. R. B. Smith — I am arguing for this proposition on the ground of expediency. That question will come up later on.

Mr. Wickersham — Does the gentleman think that the exemption of veterinary surgeons is one of great moment to the community?

Mr. R. B. Smith — Yes, I think it is. Whether the physician treats man or beast, he is subject to call; and if you exempt a physician, a regular physician, why not exempt a veterinary?

Mr. Wickersham — Does the gentleman think that an artist or a reporter for a daily newspaper or press association ought to be exempted from jury duty?

Mr. R. B. Smith — I think, as a matter of expediency, for once, we had better continue to exempt them. They are real soldiers.

Mr. Brackett — I want to know if the gentleman recognizes the proposition that the time you ought to cure a horse of the colic is when he has it?

Mr. R. B. Smith — That is true in both Onondaga and Saratoga counties. The one organization which is most affected by the present exemption in this State, is the volunteer firemen of the State. They are the ones who discharge a State function quite as important as that of jury duty in protecting lives and property in the villages of this State, where paid fire departments are impossible. The only relief or reward which the State gives them for the services which they render, at the peril of their safety and lives, is this one, that during service and after five years of service, with an honorable discharge, they are relieved from jury duty if they claim the exemption. Now, that does not affect, and all of the exemptions do not affect, seriously the jury list in any county in this State where the commissioner of jurors performs his duty. We have a jury list of some six or seven thousand in Onondaga county and that is enough if they are properly kept track of. No one has questioned — since our jury system came into effect under a county commissioner but what the jurors represented the intelligence of the county. Mr. Chairman, I hope that Mr. Latson's amendment will prevail.

The Chairman — The question now occurs upon the amendment offered by Mr. Latson.

Mr. Wickersham — Although I stated I was in favor of that amendment I was under the impression that it referred only to the National Guard; of course I am not in favor of it because it strikes out the entire section.

The Chairman — The amendment is to strike out the whole section.

Mr. Latson — My amendment proposes to strike out section 29 in its entirety.

Mr. Barnes — I rise to a point of order or a question of information. I thought Mr. Westwood's motion was a substitute to be voted upon first. If Mr. Latson's motion is carried, the other amendments die of themselves.

Mr. Wickersham — The substitute was only to be considered as an amendment and therefore has no rights.

Mr. Barnes — I should like very much to have a vote on my motion. I should like very much to see the Convention show its courage on that particular point and I think it will do that. I think it will vote not to start any other privilege-granting body. There is no possible danger of the electorate defeating the rest of the Constitution if you do that and I see no reason why it should not carry and I would like to have it done.

Mr. Wickersham — Mr. Chairman, under the rule, the amendments must be voted on in the order in which they were proposed.

The Chairman — The Chair is proceeding under that rule.

Mr. Barnes — Then I ask a question of information. My amendment will not be voted on at all?

The Chairman — It will be if the Latson amendment does not prevail.

Mr. Barnes — How could it if the whole section goes out?

The Chairman — If the Latson amendment prevails all amendments necessarily fall.

Mr. Brackett — Mr. Chairman, I cannot allow the occasion to pass without pouring a little balm on the wounded brother from New York, Delegate Stimson. I want to say to him that the proposition on the calendar will not defeat the Constitution, nor be thought of in that connection, but that some things that have been done, and some things that are likely to be done hereafter, if my brother has his way, will put this document way beyond any fear of being beaten by this section.

Mr. Stimson — Will my brother from Saratoga yield?

Mr. Brackett — Certainly.

Mr. Stimson — Does he base that on the vote on this proposition in this Convention?

Mr. Brackett — I base it on the vote of a great deal higher body than this.

The Chairman — The question occurs on the amendment offered by Mr. Latson. Those in favor will say Aye, opposed No.

The Chairman — The amendment is adopted.

Mr. Wickersham — Mr. Chairman, I ask that the next section be read.

The Secretary — Section 30. Laws may be passed to provide for a system of judicial authentication and guaranty by the State, or by any county thereof, of titles to real property, the determina-

tion of adverse claims to and interests therein, and the establishment by means of fees or otherwise of protective funds to make such system operative. Such administrative powers as are necessary may be conferred on existing courts of record.

Mr. Marshall — Mr. Chairman, I offer an amendment.

The Secretary — By Mr. Marshall. Line 9, page 34, after the word "authentication" insert a comma and the word "registration."

Mr. Reeves — Mr. Chairman and gentlemen. This section 30 is a recognition, an encouragement by the Constitution of the Torrens law for the registration of titles to real property. I am going to make some remarks upon it, very brief, with a request that after I am through any questions that may occur I will endeavor to answer to the best of my ability. Sir Robert Torrens inaugurated the system of registering titles to real property in South Australia about sixty years ago. His method was first to have a careful official examination made of the title.

Mr. Latson — I think that the House should be sufficiently quiet to enable us to hear the speaker and to understand his argument.

The Chairman — The Committee will please be in order.

Mr. Reeves — The method that Mr. Torrens inaugurated in South Australia was to have first a careful official examination of the title to satisfy the register of its validity and character and then spread it on a certificate consisting of two pages, the first one showing the ownership, the fundamental ownership of the property and the adjoining one showing what outstanding mortgages, liens or other encumbrances might exist. That certificate was made thereafter conclusive evidence against the whole world of the validity of that title and all subsequent dealings with the property must be noted on that certificate, so that it was kept perpetual, always, as a record of the title and the encumbrances upon it. The system grew in favor and spread rapidly in Australia. It was subsequently carried by Mr. Torrens into England and has been successful there. In reality, whether Mr. Torrens knew it or not, it was based on a method of dealing with titles that had already prevailed on the continent of Europe for over a century. When the effort was made to bring that method of dealing with real property titles into this country, and it was made first in Illinois and Massachusetts, it was very quickly shown by decisions that we must have one other element here. Over there they proceeded without the binding effect of a written Constitution. Here, in order thus to spread the evidence of the title on a certificate, we must first have that title adjudicated, and that adjudication must bind all the people in the world and fix the matter by due process of law.

Recognizing that, the judicial proceeding has been provided for in the various States, some fifteen or sixteen in this country, that have adopted the system, and we find it illustrated probably the best to-day in its operation in Illinois and especially in Massachusetts.

In Massachusetts, for example, where a special land court exists and takes cognizance of these matters, and their titles, for illustration, in the city of Boston, are quite commonly so fixed that when a piece of property is being sold or mortgaged all that has to be done is to go and examine the two pages of that registration certificate, to get all of the evidence as to titles and that is conclusive on the whole world, and that proceeding is frequently carried through within an hour or two. The outcome is that after the initial work of putting the title through the court and registering it on the certificate, all subsequent transfers and encumbrances are reduced to a minimum in expense and the time necessary to transfer the title is made very short — as I have said in Massachusetts only an hour or two — so that the real property titles are relieved of constant and repeated expense for reexamination when they are passed or encumbered and they are rendered a very mobile asset and can be taken out in the market and dealt with much more readily. In 1908, the Legislature of this State passed the present registration law, as it is now amended, by chapter 627 of the laws of 1910, and found as Article 12 of our Real Property Law and that work of preparing that statute was done by a commission appointed by Governor Hughes. The law as it is modelled in this State has not had the success that its friends and the real property interests of the State had hoped that it would have. It is a mistake however, to say that it has failed or that it has broken down, or that it is not to go on and be a great success in the State of New York. A number of very important titles have been registered under it and what the Court of Appeals has said with regard to it is being carried out quietly, as far as possible, in Greater New York, to quite an extent in Buffalo, and it is being used as it was intended to be, to register and authenticate good titles and not to cure bad ones.

Mr. Westwood — As I understand it, if the gentleman will permit an interruption, does he approve of the committee's recommendation?

Mr. Reeves — I do. I am coming in a very short time to sum it up.

Mr. Westwood — Well, does the gentleman understand there is any opposition to it?

Mr. Reeves — I will be very short, Mr. Westwood. The questions have been asked why has it not progressed more rapidly in

the State of New York? And in approaching those questions which I am going to answer very tersely I simply want to say one personal word: There was distributed here last Saturday, by mail, a letter claiming that I personally in supporting this provision the Committee of the Judiciary has recommended, was acting in behalf of the selfish interests of the title companies. Only a word — I don't hold any stock in any title company. I never could afford any. I have no retainer by any title company. I have no connection, business or otherwise, direct or indirect with any title company, and my only interest in supporting this Proposed Amendment is for the benefit of the people of the State, and especially the real property interests of this State, and so far as the statements in that letter, coming from Mr. Hoppers' office, and signed by his subordinate, Mr. Fairchild, is concerned, so far as they state anything to the contrary, they are absolutely false.

Mr. Marshall — Have you also seen a circular issued recently and sent broadcast through this Convention, signed by Mr. Frank Bailey, opposed to this provision, and is not Mr. Bailey a prominent official of one of the title companies?

Mr. Reeves — He is a prominent official of one of the title companies.

Mr. Marshall —And is he not opposed to this?

Mr. Reeves — I have not seen that letter, Mr. Marshall; I should suppose he does oppose it.

Mr. Stimson — Does this amendment propose to do anything more than to authorize the State of New York to introduce a system which has worked very well in other states, notably Massachusetts, and I think, Illinois.

Mr. Reeves — That is all, Mr. Stimson, that it is proposed to do. These questions come, however, and I, very tersely, wish to state one or two reasons why there has not been greater progress in this State. One is the inherent nature of the registration proceedings. Every one having any interest in property must be made a party and all possible claimants must be brought in, due process of law must be followed and yet the proceeding must be as simple and terse as possible. The steering of the ship between these two is somewhat difficult, and it takes time in a city like New York to make it work smoothly; and then, secondly, there have been advertised all kinds of claims about this system, that it was meant to cure bad titles; that it was a panacea for all of the ill's to which titles are heir and that in itself has been an injury to it, and thirdly, the stupendous opposition of the title companies in greater New York, and I suppose the letter referred to by Mr. Marshall is in line with that opposition — the stupendous opposition in getting control of the mortgage money and refusing to let

it go out on these registered titles, and in interfering in every possible way with the cases that were brought to be registered, this has stood very materially in the way of its progress. Some of those companies are seeing their mistake to-day. Some of those companies, all of them, I think, I want to say in fairness, have done good work in regard to titles in New York city, but this system is an advance on their system, and in so far as they stand against this system they are doing a wrong that should be and will be condemned by the people of the State and by the real property interests of the State.

Mr. Coles — Your firm is the firm of Reeves, Todd and Swain, is it not?

Mr. Reeves — It is.

Mr. Coles — Your firm is or has been attorneys for one of the title companies?

Mr. Reeves — I beg your pardon, my firm is not Reeves, Todd and Swain, it was years ago.

Mr. Coles — Wasn't it so recently?

Mr. Reeves — No, it was not recently; it was years ago. Mr. Swain withdrew and went over and took a position with the title company, and since then we have had no connection with him, nor with the title company, and we have nothing whatever to do with him to-day.

Mr. Coles — You are attorney for the Real Estate Board of Trade, are you not?

Mr. Reeves — I am not.

Mr. Coles — Have you not been?

Mr. Reeves — I have not.

Mr. Wickersham — Mr. Chairman, I rise to a point of order. These questions certainly are irrelevant.

Mr. Reeves — I think they are, too.

The Chairman — The Chair is of the opinion that we would better discuss the section, and not personalities.

Mr. Reeves — I don't think we ought to have these personalities. I am not connected with the title companies, and so far as they oppose this system they are doing a wrong, which ought to be condemned and which will be condemned. And I want to raise my voice here and everywhere I can against it.

Mr. Coles — The only question that is troubling us, some of us anyway, is whether or not it is necessary to insert a provision of that kind in the Constitution.

Mr. Reeves — I am coming to that in a minute. In endeavoring to further the interests of this important method of dealing with real property titles, I introduced Proposed Amendment No. 2, to form a land division of the Supreme Court for the purpose

of taking special cognizance of not only this matter but also of real property questions generally in order that we may have a body of trained judges for that work. The purpose was to follow as far as we could the very successful method of Massachusetts. The Judiciary Committee in its wisdom, and I bow to its judgment, has seen fit, rather, to put this thirtieth section in its judiciary article. Now coming to that thirtieth section, it first does this: It makes unquestionable anything with regard to the validity of our existing Registration Law. You can find good real estate lawyers up and down and through this State who are still questioning its constitutionality under our New York Constitution. This provision first authorizes such legislation, legislation for the judicial authentication of titles, that is, putting them through a judicial proceeding and registering them, and I am glad Mr. Marshall put that word in there and passing on adverse claims and providing a fund, you may call it protective or assurance, or both, it does not matter, to preserve and sustain that kind of proceeding. Now, gentlemen, that is necessary under our Constitution and should go there, to make certain in all those questions, to allay any uncertainty in the minds of real estate dealers and let it be understood that the State of New York stands for what the Court of Appeals has recently recognized as a tremendously good method of dealing with real property titles. Then, further, this proposed amendment provides that the courts of record shall have such administrative powers as may be needed. There is the crux of the situation. The reason that the Land Court in Massachusetts succeeds so splendidly is that the judge there can bring in the official examiners, give them direction, have complete control over them. We want the same as to the official examiners in New York, whether they are individual or corporate. The judge up there can deal with the surveyors, and he does, and they have a book of rules up there harmonizing as far as possible their surveys and regulating their procedure. Give to the courts of record in this State the administrative powers that are necessary and they can look after those things; and the proposition is that, when we can have a judge or some judges especially devoting their attention, as Judge Davis does in Massachusetts to this kind of work, and they may know that the Constitution of the State of New York backs them and that they have these administrative powers, then there will be a tremendous incentive that this system needs to go forward and do its beneficent work for the real property interests of this State.

Gentlemen, just one word in conclusion: Whatever we may say about this provision, this article, this Section 30, whatever we may suggest as to amendment, qualification or restriction, there is embodied here, put here by the wisdom of your Judiciary Committee,

a principle, a method, a system that is right. A system, which followed up, will not perhaps go rapidly, it will be conservative, perhaps slow, but ultimately will put every title of any importance on one of those certificates; it will do away with the expense of subsequent examination and make every one of these titles capable of very quick and easy dealing in the future, the system that the real property interests of this State want. I have here a large bundle of indorsements of the proposition from the Real Estate Board of New York, the Board of Real Estate Brokers in Brooklyn, leading real estate lawyers of Buffalo, men who know this subject are indorsing it, especially the home-builders. The building associations want it. People who want to buy tracts and divide them up into lots and sell them off want this system. What I want to urge, in closing, is, let us pass this Section 30. Let us pass it with a force that means something. Delegates of this Convention, remember here is a law that is going to be tremendously beneficial to this State. Let us lend our aid individually and collectively to its fostering, to its help, to its pushing forward to do the splendid work for the real property interests of New York that it is so well qualified to do.

Mr. Coles — Gentlemen of the Committee, this amendment, although somewhat on the line with a Proposed Amendment which I submitted to the Convention, does not go as far as I had hoped that it would go. In order for successful registration of titles, it is essential that we should get away from the court as much as we can; or, in other words, titles which are uncontested titles, in which there are no questions involved, should be registered as matters of administrative acts. That is the way it is done in Australia, in the British possessions, and the way it is done in Illinois and in Ohio. It has met with great success. The people are fearful of the fact there must be a suit of some kind or there must be an application to the court in order to have a title registered. We have to-day certain administrative officers who are clothed with certain judicial powers. We have it in the matter of taxation; we have it in the Federal government matters; we have it in various other lines. I ask here that the Legislature should be empowered to give sufficient judiciary power to certain officers so that they might register uncontested titles. Your Committee has seen fit to report back one-half of it only, which looks toward the registration of titles through the judiciary alone. That does not mean, of course, that a title would be registered in which there is any question whatever, but, as you gentlemen who are familiar with titles know, the great bulk of the titles are not contested. There can be no question raised. And so, when those titles come up for registration, they may be registered by the recording officer, or some officer appointed for that purpose, without application to

the court. If there is any exception taken to the title after due and proper notice given, then those questions are tried out in the court and an adjudication had upon them before there can be entered a registration of the title.

There is one other feature here, and that is the use of a new term in title registration, and that is the word "protective" in place of the word "assurance." The word which has been commonly used, and is to-day used concerning registration of titles in every State and every nation in which it is done, is the word "assurance," or "assurance funds," rather than "protective." It has been passed upon time and again, and is well understood by the judiciary and by the layman. I shall submit an amendment striking out the word "protective" and inserting the word "assurance." If we mean an assurance fund, why not put it in the Constitution so that there can be no indefiniteness about it? If the word "protective" has any other meaning, then I should like to know of it now, so that we may know what word we are putting in the Constitution, and what weight to give to it. And in order that we may provide for the registration of titles which are not contested, I would submit this amendment which is to add at the end of the last sentence the words, "Judicial powers may be conferred on State and county officers to register titles in uncontested cases." That means, of course, that the examinations must be made by approved examiners, that they must be certified by those who are authorized and empowered and able to furnish sufficient authentication, proper authentication, before they are registered. The amendment which is proposed, again, will necessitate an application upon a second registration to be made to the court. And if the title is once registered, it ought to be proper — a person ought to be able to go in and have it registered upon a transfer without application to the court and the necessary delay. We ask this, that we may have expedition and a successful means of registering titles. So that the titles may be passed upon by the court when it is essential that they should be, when they may be registered without application to the court, when the title is without doubt good, because if the application is made to the court in all cases the court will be governed by the same authentication, by the certificate of the same officers, as it would be if there is no application to the court, and in order to make the system a workable system, one that will not be a farce, such as we have had in the past, it is quite essential that we should make this assurance fund and that we should give to the officers of the counties and of the State the power to register titles which are uncontested. This provision in the Constitution you will note, gentlemen, is made permissive. It is not mandatory in any way whatever. The present statute has

been unworkable because it has permitted withdrawals. That apparently has been used by some of the large corporations. Perhaps many of you have had information of instances in which titles which have been registered have been refused loans by some of the companies unless they would withdraw from registration. This defect in our law was foreseen by Sir Robert Torrens in the early days of the administration of the Torrens Law in Australia, and as far back as 1882 Sir Robert Torrens said, I think, "When a title is once on the register, it should in the public interest always stay there. Otherwise owners are exposed to unfair pressure." That pressure has been used with our present statute, and the reason I am anxious that these words should be put in is that pressure of that kind will not be used in any statute which might be formulated under a Constitution such as we shall adopt.

Mr. Byrne — You say that certain officers shall register uncontested titles?

Mr. Coles — Yes, titles in uncontested cases.

Mr. Byrne — Of course, that would be after a search, would it not?

Mr. Coles — After a search and a certification.

Mr. Byrne — And that would require a title company or some legally constituted authority?

Mr. Coles — Some one authorized by the statute to make the search.

Mr. Marshall — Mr. Chairman, speaking on behalf of the Committee, I wish to say that the Committee was confronted with two theories: One, the theory suggested by the last speaker, which was intended to bestow upon administrative officers judicial functions; the other, the theory which is embodied in this amendment, which is to grant certain incidental functions to the court in order to effect a proper system of title registration. The suggestion which was made by opponents of this provision and has been favored by the register of the city of New York, Mr. Hopper, who has given some thought to the subject and whose idea it was that the registers, wherever there are registers in the State, and the county clerks, wherever there are county clerks, is that they should, with regard to the important subject of titles to real property, be invested with judicial functions. The theory of the Committee was that those functions should remain where they belong — in the court. When one considers the effect of the registration of a title under the Torrens systems, namely, that it settles the title for all time, with regard to the property which is the subject matter of registration, and is intended to make a title good which might be bad if the court or tribunal which passes upon the title did not so adjudge, it would seem that those who have a

due regard for the safety of the public, should not vest those important powers in an administrative officer, but should insist that the determination of that question should be left in the courts.

The Supreme Court of the United States held that a law which would permit the registration of titles, the terms of which were pursued, would constitute due process of law, but, nevertheless, in the case of American Land Co. vs. Zeiss, 219 U. S. 47, it was held: "A system of procedure which would secure or permit the registration of false, defective or questionable titles would give rise to conflict of ownership, litigation or appeals for legislative relief, and be inimical to public peace and contentment, and of brief existence." It would therefore seem to be the part of prudence to leave it to the courts to judicially authenticate titles rather than to impose the powers upon the registers or county clerks to dispose of questions relating to the titles of real estate in connection with the exercise by them of their administrative or ministerial functions. The Court of Appeals has recently had occasion to deal with this subject, as, for instance, in the case of Barkenthein v. The People, 211 N. Y. 357, and the case of Barkenthein v. The People, 212 N. Y. 36; also on a reargument in the Barkenthein case, 213 N. Y. 554. The argument by the court in that case, or in those cases, indicates most thoroughly the danger that would lurk in a system of insurance or a title registration of the character advocated by those who have opposed the amendment offered by the Committee. In one of the cases the Court of Appeals, after a very careful review of the record, indicated the laxity of the proceedings of the examiner who merely stated his conclusion that the title was good and asked the court upon that statement of conclusion to render a judgment determining the title. In that case, Judge Chase says: "The examiner's statements are conclusions. They are made without any statement of facts to justify them and are wholly without value." Now, then we have a question which involves the title to real estate, where a question may arise as to whether or not proper notice was served upon those who have an interest in the title, or in the property, where a question may arise as to whether there has been due process of law, where a question may arise as to whether there has been proper notice or proper advertisement or proper appearance, or whether the conditions of the statutes have been complied with, it would seem that the same procedure should be followed, as is now followed in the case of a partition suit, or an action to foreclose a mortgage where, even though there is no defense interposed and where there is a default suffered, the court, as a judicial tribunal, passes upon the regularity of the proceedings and renders its judgment after an examination of the proceedings and

of the record, and then only renders judgment which affects the title. But if the theory which is embodied in the amendment which has just been offered to the section as proposed by the committee were adopted, then we might find ourselves in a position that a man who loses his title to his property is restricted to the relief which is afforded by an insurance or protective fund which may be insufficient, and is thus deprived of his property in a manner which, certainly, to a lawyer, seems to be abhorrent, and not as a result of the action of a court but as the result of the action of a county clerk or of a register. I trust that if anything is done with respect to this Torrens system, and I think something should be done in this article, it will be done in the direction, not of giving judicial duties and judicial functions to an administrative officer, but of giving such incidental administrative duties as are required to carry into effect this provision to judicial tribunal. In that respect we are following the precedence set in Massachusetts where this theory has been practiced satisfactorily to the advantage of all concerned for quite a number of years and where this method of registration is growing in consequence of the confidence which the people have in the registration of the title, based, as it is, upon a judicial determination. The committee has no objection to that part of Mr. Coles' proposed amendment substituting the word "insurance" for protection, or the word "assurance" for the word "protection," but in respect to the remainder of his amendment, the committee is most strenuously in opposition.

Mr. Coles — Mr. Chairman, just two or three words. In so far as giving to administrative officers judicial power, we have it in the Public Service Commissions, boards of assessors, election commissioners, boards of health, and there are other instances in which such powers have been given to administrative officers. Of course it is supposed that before any title is registered, there would be proper and sufficient notice not only to the persons that might have any possible claim or shadow of claim upon the title, but also to those in possession, and under the Torrens law, as in operation in Australia, notice is given to adjoining owners. It seems a hardship that for re-registration of titles, there must be application to the court, even though there should be in the first instance. There ought to be some provision by which it is possible to enact legislation so that a person having a title to be re-registered, that is, on a transfer, he might apply to an administrative officer and have it certified and have it registered in the name of the new owner.

Mr. Reeves — Don't you understand that under the law every transfer, every deed, every mortgage, every lease, practically

every transaction, that the initial registration goes on the record, goes on and is noted on the certificate without any further judicial proceeding, until you come to the death of a person, or the foreclosure of a mortgage, or something of that nature which calls for a judicial proceeding.

Mr. Coles — Not with the wording of this amendment.

Mr. Reeves — That is the way the law stands to-day and this amendment does not interfere with it.

Mr. Coles — It does not give that judicial power to the administrative officer to pass upon that title when it is registered or transferred.

Mr. Reeves — It was held in Simon against the People, in 90 Illinois, that the mere act of noting a deed, or a mortgage, or a lease on a certificate, is not a judicial power, that it is administrative; it is only when you come to the judicial power that you ought not to give it to a county clerk or a registrar, who is generally not even a lawyer. It is only in Illinois that they ever succeeded at all in that manner, and that has been in Cook county, practically entirely in Cook county, where they had a registrar who was a lawyer and substantially a judge.

The Chairman — The question occurs upon the amendment offered by Mr. Marshall. Those in favor of its adoption will signify it by saying Aye, opposed, No. The amendment is adopted.

The next question occurs upon the amendment offered by Mr. Coles.

Mr. Coles — Mr. Chairman, I ask that it be divided.

The Chairman — The clerk will read the first amendment.

The Secretary — Page 34, line 12, strike out the word "protection" and insert the word "assurance."

Mr. Reeves — There seems to be absolutely no objection to that.

The Chairman — The question occurs upon the adoption of that amendment. All those in favor of its adoption signify it by saying Aye, those opposed, No. The amendment is adopted. The clerk will read the other amendment.

The Secretary — Page 34, line 14, strike out the period and insert after the word "record" the words "and judicial powers may be conferred upon State and county officers to register titles in uncontested cases."

The Chairman — The question occurs upon the adoption of the amendment just read. Those in favor of its adoption will signify it by saying Aye, opposed, No. The amendment is defeated.

Mr. Wickersham — Mr. Chairman, I move to renumber the section so that it will be 29 instead of 30.

The Chairman — The question occurs on the amendment as offered by General Wickersham. Those in favor of its adoption signify by saying Aye, opposed, No. The amendment is adopted.

Mr. Marshall — Mr. Chairman, I move the adoption of the section as amended.

The Chairman — The question is on the adoption of the section as amended. Those in favor of its adoption will signify by saying Aye, contrary, No. The section is adopted.

Mr. Wickersham — Mr. Chairman, there are one or two typographical errors, I would like to correct before we rise. I move to reconsider the vote by which section 2 was adopted, for the purpose of moving to amend by striking out the letter " s " in the word " justices " in line 21; it refers to the presiding justice, and the letter " s " got in some way or other. The desk copy, I understand, does not show it; therefore, I make the motion. I also move to amend that same section, I move to reconsider and amend that same section by inserting in line 22, after the words " sit in each part," " the presiding justice may preside in either part, and he shall designate the justice to preside in either part when he is not present." Mr. Chairman, that wording corresponds with the provision we have adopted respecting the Court of Appeals. I will hand the amendment to the desk.

The Chairman — The question occurs upon the motion of General Wickersham, to reconsider the vote by which Section 2 was adopted. Those in favor of the motion will signify by saying Aye, opposed, No. The motion is carried. The question now occurs upon the amendment offered by General Wickersham, that on page 3, line 21, the letter " s " be stricken from the word " justices," making it read " justice." Those in favor of its adoption signify by saying Aye, opposed, No. The amendment is adopted. The question now occurs upon the amendment offered by General Wickersham, to add after the words in line 22, page 3, " sit in each part," the words " The presiding justice may preside in either part and he shall designate the justice to preside in either part when he is not present." All in favor of its adoption signify by saying Aye, opposed, No. The amendment is adopted. The question now occurs upon the adoption of Section 2 as amended. All those in favor signify by saying Aye, opposed, No. The section is adopted.

Mr. Wickersham — Mr. Chairman, we have practically finished this article, but the other day when we were on the city court article, at my request, Mr. Latson withheld a proposed amendment in order that we might give attention to other matters, and I promised him that I would move to reconsider the vote by which that section was adopted, and give him an opportunity to present his views, and he wants me to postpone that until the evening hour.

Mr. Westwood — Mr. Chairman, in that case, if it is going over until evening, I move that the Committee take a recess until eight-thirty, and let the conference now going on, take place during recess.

Mr. Wickersham — Mr. Chairman, I was about to make that motion. The hour of five-thirty having arrived, I move that the Committee takes a recess until 8:30 P. M.

The Chairman — If there is no objection, the Committee will stand in recess until eight-thirty this evening. There being no objection, it is so ordered. Whereupon, at 6:15 P. M., the Committee took a recess until 8:30 P. M., of the same day.

AFTER RECESS—8:30 P. M.

(Mr. Wagner in the Chair.)

Mr. J. L. O'Brian — Mr. Chairman, since the Committee voted upon Section 8 of the Judiciary Article, a matter has come to my attention, the features of which I desire to place candidly before the Committee and then I shall ask unanimous consent for permission to reconsider this section for the purpose of offering an amendment.

Mr. Quigg — What page, Mr. O'Brian?

Mr. J. L. O'Brian — Page 12 of the proposed Judiciary Article, in the tenth line, there appears a clause fixing the qualifications of men who may be appointed official referees, and the qualification is that the man "shall have served as a judge of a court of record in this State for twenty years or a full term of fourteen years as a judge of the Court of Appeals or a justice of the Supreme Court," etc., the desire of the Committee being clearly that a man should not be eligible who had not served a full term on the Supreme Court bench. The point I desire to make is this: One of the justices, and one of the best justices, of the Eighth Judicial District, certainly a very eminent jurist, and a man known to most of this Convention, the Honorable Herbert P. Bissell, the only Democratic justice in that district, served a little over a year by designation or appointment. He served about a year and four months. If he lives to be seventy years of age he will have served thirteen years by election, so that altogether he will have served fourteen and a half years and yet he will not have served a single full term of fourteen years. Therefore, Mr. Chairman, I ask unanimous consent for reconsideration of this section for the purpose of offering a single amendment, which is, in line 6, page 12, to strike out the words "a full term of" so that the

sentence would read "shall have served as a judge of a court of record in this State for twenty years or fourteen years as a judge of the court of appeals or a justice of the supreme court".

The Chairman — Is there objection to reconsidering the vote by which Section 8 was adopted?

Mr. Brackett — Mr. Chairman, I object long enough to say that a somewhat active service of fifteen years in the Legislature of the State of New York never disclosed to me the height and depth of log-rolling to get in one man or to get in another that has been displayed in this Convention. I would like to have a day or two to look this over, before this amendment is adopted, because I may think of somebody I want to get in. Now let us, everybody, get in his man; don't let us make any mistake about it, and let us have a fair whack at it and if there is anybody that has someone who has served ten years and six months, I want to have it ten years and six months. Here is an amendment, Mr. Chairman, which, if it passes, permits men who have been off the bench for years to have a pension, and men that are earning less than six hundred dollars a year have got to help pay for it. If that is not the height of Constitution-making measured by the highest standards! I withdraw my objection, Mr. Chairman. I want everybody to come in and think from now on until November, that they are going to get a pension, and then I want to see what the people are going to do.

Mr. Quigg — Mr. Chairman, I object long enough to say that I despise this whole method of providing pensions. I think it is contemptible, but as long as it has been adopted, I don't see why Mr. O'Brian shouldn't have his man in and I withdraw my objections.

Mr. Wiggins — Mr. Chairman, I likewise wish to offer my objection to this amendment. If you are going to roll this judiciary article around and get it into shape so that everybody may get in who feels he ought to be put in and then I think we ought to take a little more time for the purpose of pensioning them all in the manner which should probably meet with everybody's approval. I observed in reading the original article first, they start off with a term of twenty years in a court of record, and that, I have no doubt, was done for some special purpose. And then they drop to fourteen years, for a judge of the Court of Appeals or a justice of the Supreme Court. Now, if we are going to open up the matter again, let us advertise through the papers of the State of New York that the Supreme Court judges are to be given pensions, and that on Thursday of this week all applications must be in, and let them be presented to this Convention, and then carve out those whom we think we are friendly enough with to place

in this Judiciary Article. It seems to me to be almost as Mr. Brackett says like a legislative matter in which we are log-rolling from one side of the chamber to the other. I am willing to roll, Mr. O'Brian, the log, as far as you want to. But let everybody in, so that we won't have to open the thing up again on third reading, when some judge has read about it in Buffalo, and we ought to get in thirteen months and so many days. Let us give everybody an opportunity now and then we won't have to open up this matter again.

The Chairman — The objection is withdrawn?

Mr. Wiggins — I withdraw it, with those few words.

The Chairman — The question is upon permission asked by the gentleman from Erie that the vote by which Section 8 was adopted be reconsidered. Those in favor will please signify by saying Aye, those opposed No. The vote is reconsidered. The question now is upon the amendment offered by the gentleman from Erie: On page 12, line 10, to eliminate the words "a full term of". The question is upon the adoption of the amendment. Those in favor will signify by saying Aye.

Mr. Wiggins — Rising vote.

The Chairman — Those opposed, No.

The Chairman — Those in favor of the amendment will please rise. Those opposed will rise. The Clerk will announce the result.

The Secretary —Ayes 59; Noes 37.

The Chairman — The amendment has been adopted. The question now occurs upon the adoption of Section 8 as amended.

Mr. Brackett — Mr. Chairman, do the members of this Committee realize what they are doing? I suppose they do, but have they analyzed this language? Do they know that any judge of the Supreme Court who has served fourteen years, and who may five or six or eight years ago have been retired because the people of his district did not want him any longer — do they know that when he gets to be sixty years of age, he will come in finally for his pension?

Mr. Wickersham — I rise to a point of order.

Mr. Brackett — What is it?

Mr. Wickersham —As to whether this shall be passed.

The Chairman — The adoption of Section 8 as amended.

Mr. Brackett — My honored leader has broken me all up with my train of thought.

Mr. Wickersham — Far be it from me to do that.

Mr. Brackett — I will have to start and go back again. A man who was elected as a Supreme Court judge anywhere in this State eighteen years ago and serves so unworthily that the people

of his district do not want him, and wouldn't have him and cast him out and put somebody else in his place —

Mr. Martin — Does the gentleman from Saratoga know that this section deliberately covers such a case and that there has been a man in one of the departments whom the people refused to send back, and who will be covered by this and given a pension, although the people would not send him back?

Mr. Brackett — Oh, brother, I have more than one in mind.

Mr. Dykman — Will the gentleman yield long enough for me to offer an amendment which will perhaps meet this case?

Mr. Brackett — No, sir, I don't. I want to call attention to this language in all its nakedness, just as it is. That is what I want to do. And I want to have it understood, and the people of the State understand it, that the majority of 168 men sent here to make a Constitution have, after days of debate, deliberately voted to give a pension to a man under those circumstances. Now, you may think I speak bitterly. I am whipping with cords when I ought to be whipping with scorpions, a man who would think of voting such a thing as that on the people of the State. You talk about a man not being in sympathy with such a thing as a reactionary, and opposed to all progress, and against judges, the faithful judges that have rendered service. I want to tell you that you need not go further with any provision in this Constitution, because it will be rejected. It is needless to say what will happen on election day. But don't spend any time worrying about any little thing that will happen. Here is what will happen, and justly, the rejection ignominiously of any Constitution that has such a thing as this in it.

Mr. Dykman — I want to ask unanimous consent to offer this amendment: Page 12, after the words " and who ",— line 12, page 12, after the words " the Supreme Court, and who ", insert these words: " at the time of such retirement," so that it will read " that the judge to be eligible must have reached the age of sixty years at the time of his retirement."

Mr. Brackett — A point of order, that while the question is pending as to the passage of the section to third reading, an amendment is not in order. I appreciate it could be done later, so I sha'n't be very much disturbed if the Chair —

The Chairman — The point of order is not well taken.

Mr. Brackett — I am not disturbed. I got there first. Now, let me tell you what that language will do. See if you want to do that. It must be done some way. These pensions have got to be taken care of. It is the most sacred thing we are here for. Now, let me tell my good brother from Brooklyn just what is going to happen. Five years ago a judge of the Supreme Court had served

fourteen years, and he was sixty years old when he retired, and he has been off now five or six years, perhaps eight years, and he has practiced law ever since. You want to give him a pension. That is what it will do.

Mr. D. Nicoll — I don't think that members of this Convention ought to be agitated by the decided language of the delegate from Saratoga. His business now is to bury the Constitution as promptly as possible and to indulge in a line of observations which he fondly believes and hopes will have that effect. Now there is nothing in this Proposed Amendment which should disturb anyone. In the first place, we are not providing for pensions at all and anyone who makes that representation to the Convention or to the public at large is entirely mistaken. We are simply providing the State with an opportunity to employ the services of men who are qualified to serve the State after they have rendered a period of service upon the bench. That is all we are doing. And we are giving it to whom? To men who have served fourteen years and who have reached the age of sixty years. But we are not doing that even. We are simply making it permissive for the Court of Appeals and the Appellate Division to do it.

Mr. Quigg — That is just the question, Mr. Nicoll, with the paragraph. You don't require any service. You enable the appellate divisions to make these salaries, to pay it whether they render service or not and it is nothing more or less than a pension.

Mr. Nicoll — We don't do anything of the sort. If you have read the amendment —

Mr. Quigg — I read it.

Mr. D. Nicoll — It provides that such a person as we have described may be appointed and by whom? May be appointed by the Court of Appeals or may be appointed by the Appellate Division and the Legislature shall fix the salary.

Mr. Quigg — Must he work?

Mr. D. Nicoll — Why, you don't suppose the Court of Appeals or Appellate Division is going to select a man who cannot work? They won't select a man that is blind, or deaf or has some mental infirmity. And so I do not believe there is any reason in the world why this should not pass.

Mr. Dunlap — Do you approve of having a man appointed official referee who served for fourteen years as a Supreme Court judge, who was defeated for renomination always unanimously in his district, who has since practiced law for more than ten years in the city of New York — do you contend or believe that such a man should be appointed?

Mr. D. Nicoll — I intend to leave it to the Court of Appeals or Appellate Division to say whether the State needs them in the capacity of an official referee.

Mr. Dunlap — After the people have repudiated him?

Mr. D. Nicoll — After the politicians have turned him down? Good judges are renominated.

Mr. Dunlap — But he was not renominated.

Mr. D. Nicoll — No, after the politicians had turned him down, that is my experience.

Mr. Leggett — Why do you differ from your colleague, Mr. Stanchfield, in recoiling from calling it a pension?

Mr. D. Nicoll — I differ from him in many things. I don't know why I differ with him on this. I am for pensions. I believe in pensions. I believe in the United States system. I believe that everybody who has served on the bench a long time should have a pension. But you are afraid of it. Men like the delegate from Saratoga county scare the Convention to death when you say "pensions" and so this is a scheme, when adopted, for utilizing those men who have been retired from the bench and who have been thrown down perhaps because they would not be subject to political influences while on the bench.

Mr. Westwood — Mr. Chairman, the only valid reason why the people of this State should pension their judges is to save for the people of the State the benefit of long experience and wisdom acquired by the judges during the time the State was paying them. If Mr. Dykman's amendment should prevail, it would cut off certain judges, and hence the people could not obtain the benefit of the experience of such men who had reached the age of 59 years, at the end of 14 or 28 years of service. There is no reason why this discrimination should be made by this Convention. If it is good to save to the State the experience of these men it is well that it should be saved to the State, whether they have reached the age of 60 years or not, and when this suggestion is made the insidious evil is done of making a distinction in favor of one class of judges, or a certain number of retired judges, against a certain other number. I do not think this amendment ought to prevail.

The Chairman — The question occurs on the amendment by the gentleman from Kings, Mr. Dykman. Does anybody want it read for the information of the committee?

Mr. Brackett — This is on the amendment by Mr. Dykman?

The Chairman — Yes.

Mr. Brackett — No. I must vote against that. My friend Judge O'Brien is eligible under the other amendment and this would cut him out. I don't believe Brother Dykman wants to do that. Well, that is true; he served fourteen years or more. He wasn't sixty when he got out, but he is now. Now, I am going to fight this amendment to the utmost. I want my friend in, too.

Mr. Ostrander — I wonder if we couldn't squeeze out a little something for a fellow who served his district well by being beaten.

The Chairman — The question occurs on the amendment offered by Mr. Dykman. Those in favor of the amendment will signify by saying Aye, opposed, No. This amendment is defeated.

Mr. Clinton — Mr. Chairman, I call for a rising vote on that — that last vote.

The Chairman — The Chair has announced the result, but the Chair will put the question again. Those in favor of the amendment will please rise. Those opposed will rise. The amendment is lost. The question now occurs upon the adoption of Section 8. Those in favor of its adoption will signify by saying Aye, those opposed, No. The Chair is in doubt. Those in favor of the adoption of Section 8 will please rise.

Mr. Wickersham — I believe that the House does not fully understand what we are voting on. I desire to have it stated.

The Chairman — The question is on the adoption of Section 8.

Mr. Brackett — I object. The vote is being taken and nothing else is in order.

The Chairman — The Committee is always entitled to know the question on which it is voting. Section 8 has been adopted by the Committee of the Whole. Mr. O'Brian of Erie asked to-night, after unanimous consent, that the vote by which that section was adopted be reconsidered. That consent was granted, whereupon an amendment was offered by Mr. O'Brian, which was adopted. The question now again occurs upon the adoption of Section 8.

Mr. Wickersham — As amended?

The Chairman — As amended. Those opposed will rise. The clerk will announce the result.

The Secretary — Ayes, 58; Noes, 50.

The Chairman — The section has been adopted.

Mr. Wickersham — I ask unanimous consent for the reconsideration of Section 21, relating to the City Court. The other day when it was under discussion Delegate Latson offered a Proposed Amendment, which, at my request, he withheld at that time because we were approaching the close of the session, and I promised that I would move to reconsider it in order that he might have an opportunity to offer his Proposed Amendment and have a vote taken upon it. I therefore move that this section be reconsidered in order that Mr. Latson may tender his Proposed Amendment.

The Chairman — The question is upon the motion of General Wickersham, that the vote by which Section 21 was adopted be reconsidered. Those in favor of the motion will signify by saying Aye, opposed, No. The vote has been reconsidered, and the section is now before us for consideration — Section 21.

Mr. Latson — Mr. Chairman, this section, you will observe, deals with the treatment of the city court of the city of New York.

You will find that on page 28 of the bill, the section commencing in line 21. Now let me for a moment remind the Convention of just what the Judiciary Committee did with reference to this point. We had in the city of New York a court of general sessions, the jurisdiction of which was confined to the county of New York, and we had also the city court of New York, the jurisdiction of which was likewise confined to that county. Over in Kings county, in Brooklyn, we had the county court, and there was likewise a county court in Richmond county, and in Nassau county, and in Queens and in the Bronx. Now the plan they adopted was to extend the jurisdiction of the court of general sessions throughout the city. The plan which the Judiciary Committee adopted was to extend the jurisdiction of the court of general sessions throughout the city, and to make the county judges, judges of that court. That being done, you will see that the civil jurisdiction of the county courst remained unprovided for. To provide for that branch, they took the city court of New York and ran that throughout the city, providing that the ten judges of the city court, as now constituted, should remain judges of that part, with the two who should be elected in the Borough of Kings, and one in the Bronx, and one in Richmond, and one in Queens, and that the jurisdiction of the city court as thus extended should be just the same identically as the jurisdiction of the present city court. Now it seems to me that a bad plan has been adopted there and I think that, upon mature consideration, the members of the Judiciary Committee will see that a better solution might have been worked out. Those of you who do not practice in the city court ought to know something of the history of the city court of New York. It is a very old tribunal, more than a century old, and was formerly known as the marine court. It had special jurisdiction in marine matters and later its jurisdiction was broadened until it came to handle the smaller contract and common law matters in the city and was frequented mainly by the junior bar. The court has had a rather remarkable history in some respects. There was a time many years ago, when, as the city of New York, and before that as the marine court, it was a reasonably strong bench. Some very excellent men were on that bench. Then came a time when I may say the contrary was the fact, when the court was not highly regarded and the men on the bench were not in all respects ideal. More recently that bench has greatly improved and has been strengthened by the advent of some very excellent men.

Now, I understand that the Judiciary Committee attempted to face this problem in two or three ways. It was suggested that this court be thrown into the supreme court but that did not

seem satisfactory and there are some reasons why that might not be a wise course to pursue. But, by what we have done, you will see what has happened to it. There is a very substantial equity jurisprudence in the old county court.

The jurisdiction of the city court is limited, (1), to an action to recover a sum of money only, or to recover a chattel; and, (2), an action to foreclose or enforce a lien upon real property, a mechanic's lien; (3), an action to foreclose a lien on personal property; and (4), a confession of judgment. Now that is the jurisdiction of the city court.

But if you glance for a moment at the jurisdiction of the county court which we have lost you will see what a substantial change has taken place. The county court, as you are all aware has jurisdiction over an action for the partition of real property, for dower; for the foreclosure, etc., of a mortgage; over an action in favor of the executor, administrator or assignee of a judgment creditor; over an action where the parties are residents of the county, with a limit as to amount: and it has jurisdiction with reference to incompetency and lunacy proceedings, so you will see there is a very distinct difference. Now the effect of that is to leave these large boroughs in the city of New York, all of them, including Manhattan, without any intermediate court. In the meantime, there has been passed by the Legislature a bill extending the jurisdiction of our municipal courts to one thousand dollars. That law goes into effect the first of September, and that gives us a very substantial jurisdiction for a minor court. That court extends throughout the city and the justices are elected in districts running throughout the city. They do very excellent work and the court is very highly regarded. So you must think of that — shall I say — as the poor man's court, of the court where small matters and small litigation are to be dealt with, rather than in the city court. Now the effect of this proposed amendment that is before us would be to have the city court draw from the municipal court very much more than it would draw from the Supreme Court. The objective point of the Committee on Judiciary undoubtedly was to relieve the Supreme Court, and nearly all the suggestions that they have offered have had as their objective point the relief of the congestion of the calendars in the Supreme Court. But the thing I wish to point out is that by their treatment of the city court they will fail to accomplish their purpose. Every one of us understand the reluctance with which we go into courts of limited jurisdiction, and we have so long been taught that the distinction between law and equity has been abandoned and obliterated that we scarcely know anywhere to draw the line, and it is a fact in practice in our cities that we very reluctantly —

The Chairman — The Convention will be in order. I hope the committee will give the speaker a little attention. He is having great difficulty in making himself heard. The Chair instructs the sergeant at arms to ask the visitors not to converse while in the chamber.

Mr. Latson — Mr. Chairman and gentlemen. I was about to say that we all realize and recognize the reluctance with which we enter a court of limited jurisdiction, and that is a reason why the City Court of the city of New York has never grown to any very great dignity, because the matters which are taken in that court are matters where one is absolutely certain that he will not enter upon the equity side of the court and thereby be embarrassed. It is frequented largely by the junior bar, and I think I may safely say that there are very few members of the Committee on Judiciary that have set foot in the City Court within the last twenty-five or thirty years. It is not the court where the senior bar very frequently enter. If they do enter they enter as a rule for the purpose of appearing for a defendant. Well now, the point I wish to make is this, that I think if the Committee on Judiciary had attempted to lift that bench and to give it greater dignity they would have accomplished a great deal more for the bench, for the litigants, for the bar and for our community. Prior to the present Constitution, prior to '94 we had in New York city proper, the old city of New York, the old superior city courts, and we had one in Brooklyn, the Brooklyn city court. Now those courts had a jurisdiction of territorial limitation, and they had full concurrent jurisdiction with the Supreme Court in law and equity, and the result was that those courts became very dignified courts. You may remember, some of you, the famous Beecher-Tilden trial was tried in the Brooklyn city court, not in the Supreme Court, and men of the type of William M. Evarts and Judge Fullerton and Benjamin F. Tracy practiced in those courts. The Brooklyn City court sent a number of justices to the Supreme Court bench, for example, Justice Van Wyck and Justice Osborne. In Manhattan the Superior City Courts sent to the Supreme Court bench such men as Justice Pryor, Justice Giegerich, Justice Allen, Justice Freedman and others. In other words, it was a very strong bench both in Manhattan and in Brooklyn, and the reason for it was that practitioners who elected to go in there had a feeling that there was no limitation upon the power of the court, and its jurisdiction to do substantial justice between the parties whether they entered upon a matter of common law practice, or a practice in equity. It occurs to me that if the committee had extended the territorial jurisdiction of the city court of New York throughout the city and then modelled

it after our old superior city courts, giving concurrent jurisdiction with the Supreme Court in law and equity, limited only territorily, as were the old Superior city courts, we would have been given a tribunal very greatly to be respected. It would draw men of higher caliber to the bench, it would draw litigants willing to submit their matters to adjudication and it would draw the best practitioners, thus relieving the Supreme Court very much more than the plan submitted by the Judiciary Committee. To that end and embodying that suggestion, I offer the following amendments.

Mr. Wickersham — Mr. Chairman. Have you finished, Mr. Latson?

Mr. Latson — I will simply read it as I propose to amend it and then I will give away.

The Chairman — May we have the amendment read first?

Mr. Latson — Yes, I will send it to the desk.

The Chairman — The Secretary will read the amendments.

The Secretary — By Mr. Latson — Page 28, line 23, after the comma, insert in italics, "Its territorial jurisdiction and powers with respect to the service of process and residence of parties as now limited to the county of New York shall extend". Page 28, line 24, strike out "power". Page 28, line 25, strike out all after the comma and strike out line 26 and insert in italics in place thereof "And it shall have general jurisdiction in law and equity in civil cases coextensive with the Supreme Court, subject only to such territorial limitation". Page 29, strike out line 1 and line 2 down to and including the period.

Mr. Latson — Mr. Chairman, I would like to read this portion of section 21 as it would be if amended. It would read in this way: "The city court of the city of New York is continued, and from and after the first day of January, nineteen hundred and seventeen, its territorial jurisdiction and powers with respect to service of process and residents of parties as now limited to the county of New York shall extend throughout the city of New York, under the name of the city court of the city of New York, and it shall have general jurisdiction in law and equity in civil cases coextensive with that of the supreme court, subject only to such territorial jurisdiction."

Mr. Wickersham — The amendment offered by Mr. Latson is wholly at variance with the scheme of distribution of jurisdiction adopted by the Judiciary Committee. Mr. Chairman, there has been going on for years past a process of the formation of courts of inferior jurisdiction in the city of New York. They are gradually extending their jurisdiction through the action of the Legislature getting increases of their salaries and finally appearing as candi-

dates for admission to the Supreme Court, and so the old Court of Common Pleas and the old Superior Court have been absorbed into the Supreme Court, and the court which started as a poor man's court has rolled itself up until it has become not necessarily a poor man's court. Now, one of the things that we tried to do in the Judiciary Committee was to stop that process and hold down these ambitious courts that are not content with administering justice between man and man in the small cases, but are always reaching out for additional jurisdiction, and we provided for the inferior local court and then we provided for the City Court as an intermediate court between the inferior local court and the Supreme Court; and we recommended the extension of the jurisdiction of the City Court of the city of New York throughout the city of New York and with the same jurisdiction throughout the city which the City Court now possesses in the counties of New York and the Bronx. Now Mr. Chairman, there has been and there is to-day, I think, in the three counties outside of the county of New York and the Bronx, a County Court. The County Courts have come to have somewhat larger jurisdiction than the City Court has in New York, growing out of the fact that in many of the counties there is not present a Supreme Court justice, or a term of the Supreme Court, and it has been a convenience to suitors to have a County Court nearby with a larger jurisdiction than the County Courts originally had.

Now, when we come to the formation of the City Court of New York and extending its jurisdiction throughout the city, we did not deem it wise to vest that court with the same jurisdiction that County Courts have, because we could not see that there was any necessity for doing so; nor did we for one moment consider this ambitious scheme of clothing the City Court with all the jurisdiction of the Supreme Court at law and in equity within the limits of five thousand dollars. Mr. Chairman, it was with the greatest reluctance that the Committee reached the conclusion to recommend an increase in the amount for which suits might be brought in the city court from two thousand to five thousand dollars. My sober and second thought is that we would have done better if we had kept it down to three thousand dollars which is the amount that city courts now have, but as to adding to it, plenary equity jurisdiction, I think every lawyer in the City of New York would rise up in horror at the idea of going into the City Court of New York for plenary equity relief. It is a preposterous suggestion. It is a suggestion that nobody familiar with the reputation and standing which that court has had would entertain. I do not mean to say they are not good men within their limits. They are. The court is all right in the exercise of the jurisdiction it has. We hope to

make it a better court than it has been by bringing in these other judges and extending its jurisdiction. As to clothing it with plenary equity jurisdiction and making a minute Supreme Court of it, I think the suggestion is utterly without merit and I sincerely hope it will not prevail.

Mr. Brackett — Is there any provision, and if there is not, ought there not to be to meet this situation. Your City Court, I think it is, gets a countryman in the city, serves a process on him, and no matter whether the place of trial should be in the city or should be up in the country, he cannot move to change the place of trial if it is in that local court, and there ought to be some provision by which a motion can be made there in that court, or in the Supreme Court to change the place of trial, if it ought to be changed, either in the Supreme Court or in the local court, and put the jurisdiction where it ought to be, up in the country.

Mr. Latson — Mr. Chairman, I apprehend that such a situation as the gentleman from Saratoga has pointed out would be a proper subject for consideration when they come to frame the practice act. I take it if this court were given such jurisdiction as I think it ought to have, it would be necessary that some rule be adopted to avoid the very thing which the gentleman has spoken of. It must be remembered, gentlemen, and I am speaking to those who are not from the City of New York, that this court has a six-day process, only six days between the pleadings, and we get to trial in that court, or at issue, before your time to answer would expire in the Supreme Court, and yet the court is a very great convenience.

Mr. Brackett — Several times I have found that where jurisdiction is sought, that if service is made within the territory of the city, the jurisdiction attaches, and that in such a case you have a countryman sewed up pretty tight and he has to come up to settle whether he ought to or not, because he could not get the place of trial changed to where it should be if it were in the Supreme Court. I had in mind at the time I asked the question, that perhaps it was a question of legislation, rather than a question of jurisdiction.

Mr. Latson — That is a matter of legislation.

Mr. D. Nicoll — Isn't it a fact that if a city man goes up in your country towns and he is served with a process in one of your country courts, that he meets with the same situation?

Mr. Brackett — Oh, we never do any such things as that. We don't think of anything like that.

Mr. D. Nicoll — I think it works both ways.

Mr. Brackett — No, we sue them in the Supreme Court.

Mr. Wickersham — Mr. Blauvelt, you asked me a question, or started to, and I was interrupted at the moment.

Mr. Blauvelt — The first question I would like to ask is what provision, if any, is made for the transfer of the equity causes pending in the county courts of Richmond, Kings and the Bronx, and second, is any relief given to Kings county to dispose of its big accumulation of civil cases pending in the County Court?

Mr. Wickersham — The provision is as follows: All civil actions or proceedings on January first, one thousand nine hundred and seventeen, pending in the county courts of the counties of Kings, Queens, Richmond and Bronx, respectively, shall thereupon be transferred to the city court of New York for hearing and determination, which court for the purpose only of such hearing and determination, and to enforce the judgments rendered thereon, shall have and exercise the jurisdiction previously vested in the respective county courts from which such cases are so transferred, at terms held within the county in which the same are pending. So you see, we have taken care of that.

Mr. Blauvelt — But what about the accumulation? In Brooklyn there are now four county judges and there is a big accumulation, a big civil calendar pending the year around. I have some of them myself some five or six years old, never been able to get to trial. Now, with two City Court judges there, having civil jurisdiction, do you think it is possible for them to take care of the new causes as well as to dispose of this large accumulation of old causes?

Mr. Wickersham — Mr. Chairman, I think that any accumulation of causes in a trial court more than five years old would be very speedily disposed of if the judge called the calendar and cases had to be speedily tried or marked off the calendar.

Mr. Blauvelt — But, we have not had an opportunity to try our civil cases. The county judges in Kings county for a number of years have been devoting all of their time to the trial of criminal cases, and there are a great many legitimate cases awaiting trial in Kings county that we have not been able to try because there was no judge sitting there to try and dispose of them.

Mr. Wickersham — There are now two judges under this plan, and we have sought to provide a sufficient force of judges for the whole city to enable an additional member to be drawn into any one place where there is a congestion and to clear up that congestion and in that way distribute that business.

Mr. Root — Mr. Chairman: I am not familiar with the situation to which this particular provision applies. I would like to make an observation upon the general subject to which this provision belongs. It requires continual watchfulness to preserve the courts of small jurisdiction for the trial of the causes of the poor, of men of moderate means, of small business. Their causes are more important to them than the great causes which receive the

attention of the press and enlist the services of leaders of the bar in the great courts. Every time, however, that you create a court for the trial of small causes the court immediately sets to work to get its jurisdiction enlarged. It never failed. I speak upon the careful attention growing out of the consideration of this same subject in the Judiciary Committee of the Convention twenty-one years ago. Every court created for the trial of small causes tries to get its jurisdiction enlarged, and when the jurisdiction is enlarged the judges give their attention to the larger causes and reject the small causes. They would rather be concerned in great affairs than in small affairs; and so, yielding, in a good-natured way, to the importunities of those gentlemen who wish to enlarge their offices, we gradually destroy court after court intended for the trial of small causes. I think it was a mistake to increase the jurisdiction of this court from $2,000 to $5,000. I think it would be another mistake to give them full equity jurisdiction. You have got a court that will deal with the affairs that are small in amount? Keep it; and let it render the service it was created for, instead of allowing it to transfer itself and become a duplicate Supreme Court. Or if you do not do that, then you must create another court for the small causes and enlarge that, and create more courts, in unending succession. I think the whole tendency should be resisted.

Mr. Marshall — I am sure that nobody in this State would be more surprised at the motion of Mr. Latson than the judges of the city court of New York. This motion seeks to establish a court which is the rival of the superior court within the boundaries of the city of New York. It is a cool proposition to give to the city court original jurisdiction in law and equity equal to that of the Supreme Court, limited only to the territorial jurisdiction which can be exercised within the boundaries of the city of New York; and the very gentleman in support of this proposition delivers an encomium upon the city court of Brooklyn, the court of common pleas and the superior court of New York and the superior court of Buffalo, and is seeking to restore a situation which in the Constitutional Convention of 1894, resulted by unanimous vote in the abolishing of those courts in the hope that there would never arise in this State again a similar situation. Under the situation which then existed a plaintiff could choose his own tribunal. If he thought he could not get the favors he wanted in the Supreme Court, he would go into his favorite tribunal, the court of common pleas. If in Brooklyn he could not get those favors he would go into the Supreme Court and in Buffalo if he could not get the favors he desired in the supreme court he would go into the superior court and the unheard of situation existed of allowing a plaintiff to seek his own tribunal. And the gentleman

from Brooklyn comes here and seeks to repeat that situation which we dealt with in '94 when we wiped out the city court of Brooklyn, and the superior court of Buffalo and the court of common pleas in Brooklyn and the supreme court of New York. Why if you ask any of the judges of the City Court of New York to-day whether they were fit to try an equity case, if they were conscientious men they would say they are not fit to do so; and if they would not say it I would say it for them. They are men elected by the people of the city of New York to hear cases involving a monetary value of $2,000. They are destitute of equity jurisdiction except such as relate to a mechanic's lien suit, and now the effort is made to put those judges in charge of the administration of our great equity causes, of causes involving unlimited amounts, that the Court of Appeals in the case of Lewkowitz against the Queen Aeroplane Company, 203 N. Y. were constrained —And I think there was not much constraint about it either — decided that the courts could not exercise jurisdiction beyond $2,000 and that the attempt to increase that jurisdiction was unconstitutional and void. And now we coldly hear the proposition that those judges should at once be placed upon the same plane as the judges of the Supreme Court. I am shocked beyond expression at the thought that such a proposition could be named here in this Convention. In the Committee of the Judiciary there was strong protest against an increase of jurisdiction of that court from $2,000 to $5,000 and now that this question has been set at large I offer an amendment which I prepared before the President of the Convention spoke, reducing the jurisdiction of that court from $5,000 to $3,000. Let us see where we stand on that proposition.

The Chairman — The Clerk will read.

The Secretary — By Mr. Marshall. From line 2, page 29, strike out the word "five" and insert the word "three."

Mr. Buxbaum — What Mr. Marshall has said in regard to the judges of the City Court of New York may apply to the judges who get in that position in the Borough of Manhattan. I, coming from the county of Kings, take exception to his remarks having any application to our judges. If Mr. Marshall will look into the situation in Kings he will find Judges Crane and Aspinwall, two of our county judges, who to-day grace the Supreme Court bench. They were found eligible by the people of Kings county and were put on the Supreme Court bench. We have to-day very able men, and we have men to-day in the County Court who are able men and their jurisdiction is taken from them and where have you left that equity jurisdiction? If a party wants to make application which is properly made at the equity term or in chambers, there is no judge to whom that application can be made. The

Special Term of the Supreme Court does not sit in Kings county as regularly as it does in New York and you have no court in which to make your application. What the President has said about courts desiring to extend their jurisdiction and powers well applies, because the Supreme Court is expanding jurisdiction, is increasing and there is no County Court to deal with the smaller matters, equity matters, and therefore, we in Kings, and those in Queens, would like to see some court of equity.

Mr. Byrne — Mr. Chairman and Gentlemen of the Committee, this is rather a warm evening. The gentlemen who have spoken this evening certainly have been in earnest. No doubt about that. You are about to take away in Kings county the County Court. The County Court with equity jurisdiction, you are about to expand the City Court over the whole city and you are increasing the financial jurisdiction, the money jurisdiction of that court.

Mr. Marshall — What is the monetary jurisdiction of the County Court?

Mr. Byrne — $2,000.

Mr. Marshall — What have we decided to do with regard to it in the County Court section?

Mr. Byrne — You are making it $5,000.

Mr. Marshall — No. We increase it to $3,000. And by reducing the City Court to $3,000 we are putting it on a par with the County Court, where it belongs.

Mr. Byrne — When was it reduced?

Mr. Marshall — We are making it.

Mr. Byrne — Oh, you intend to make it so? I did not understand it was voted upon.

Mr. Marshall — We have voted on the County Court section.

Mr. Byrne — Well, now, you are extending the jurisdiction of this city court. Mr. Root well said that the poor man's cases are entitled to as much, if not more, attention than the men who are able to employ the leaders of the bar to plead their cases. Well, if they are, let us give them judges, then, of a quality that will be able to handle their cases, although small in amount, the same as if they had a leader of the bar for a lawyer. Mr. Latson's argument is that we should have — I am not speaking anything about this unlimited jurisdiction now — but that we should have a court. It is not a poor man's court. The poor man's court is the thousand-dollars court, the municipal court. I never heard this called before the poor man's court. Perhaps I am wrong. But if we are going to have some court between this thousand-dollar court and the court that we can sue for anything in, and it is to extend over the entire city — I don't care what amount you are going to fix — let us give that court equity jurisdiction.

Mr. Marshall —Are you not aware of the fact that during this last year the jurisdiction of the municipal court was raised to one thousand dollars — from five hundred dollars to a thousand dollars, at the instance of the judges, and those same judges came here for the purpose of having their court consolidated with the city court?

Mr. Byrne — Haven't I said the poor man's court was the court of a thousand dollars? That is what I am speaking of. I know the change that was made.

Mr. Marshall — They are seeking to incorporate their court into the city court. There will be no court left for a poor man.

Mr. Byrne — I am not dealing with what they are seeking to do. If you are going to extend this city court over the whole city and increase the money jurisdiction, then give it equity powers. Don't make us go into some other court for that. You are taking away such powers, the equity powers in the county court, and not giving any to the city court.

Mr. Quigg — Don't you know that if this were done, just as it is now, and the five-thousand-dollar jurisdiction extended to the city court, you could dispose in the city court of fully nine-tenths of all the tort practice in New York?

Mr. Byrne — I do know it.

Mr. Quigg — Wouldn't that be a very good thing to do?

Mr. Byrne — Yes; I know it would relieve the supreme court because the majority of the tort cases brought there are five thousand dollars or under.

Mr. Quigg — Then, if that is done, you know, if you are going to clog it up with equity cases you cannot get rid of them?

Mr. Byrne — I do not think so.

Mr. Winslow — Mr. Chairman, I hope that the amendment proposed by Mr. Marshall will prevail. It seems to me that the added jurisdiction of the city court as to amount is a most inadvisable addition, but when we use that argument, we must bear in mind, as Mr. Latson has very properly said, that in abolishing the county courts of Kings county, we have taken away from Kings county the court of original equity jurisdiction for the poor man. And if it be true that the justices of the City Courts of New York as now constituted, as Mr. Marshall has said, are not competent to try equity cases, then I call the Convention's attention to the language on page 30, where pending cases in the County Court of Kings county after its abolition are transferred for the purpose of hearing and determination to the justices of the enlarged city court.

Mr. Marshall — Is not the equity jurisdiction possessed by the County Court of the most limited and rudimentary character?

Mr. Winslow — It is true they are limited in character as to territorial jurisdiction and amount involved, but the County Courts of the State, including the County Court of Kings county as at present constituted, are not limited in the sense that the gentleman intends by the question he asks. If we are going to take away from the County Courts of Kings county this equity jurisdiction, and say the pending cases undetermined must be transferred to this City Court, with its enlarged territorial jurisdiction, then take away from them the power to try these undetermined and pending cases and put them in the Supreme Court. But if we are going to extend the territorial jurisdiction of the present City Court of New York, then let us provide some other equity jurisdiction for a local court in Kings, or else give to the new City Court some equity jurisdiction. It seems to me that by taking away the power of the present County Court of Kings, we are taking away the court for the poor man's litigation and giving him nothing in return.

Mr. Brackett — Mr. Chairman, I am not familiar with the situation in courts in the city of New York and I shall not attempt to enlighten any member of this Convention by any observations with respect to it. But the observations of the President of the Convention have met so entirely with my own views on the subject of the grabbing of jurisdiction that I cannot fail to express my concurrence to the Convention. But I hope that he will take a wider vision and that he will not limit his characterization of the grabbing of jurisdiction to these minor courts, because it is not all limited to them. Mr. Chairman, it permeates and soaks every department of the State. You, Mr. Chairman, can recall case after case where some department of the State has been started by some voluntary association coming up to the Legislature and getting authority to do certain things without any compensation. The next year they think they ought to have their expenses, and the third year they think they ought to have a secretary, and the fourth year they have done such good work that they ought to have a salary. Presently you have a full-fledged department reaching everywhere for jurisdiction. It is not so simply with the minor courts to which the President has called attention. It is so in every department of the State and I have no doubt in every municipality in the State. Mr. Chairman, it is so particularly with regard to the executive branch of the State. And if any word of mine could direct the attenion of the President of the Convention so that he would get a proper and a just view of the attempts of the executive to reach in every direction and grasp jurisdiction at the expense of the other great departments of the State, I should be sure that this Convention has not been held in vain.

Mr. Bernstein — Mr. Chairman, I do not think that the gentlemen who have discussed this subject have struck the real point, which, to my mind, seems to be all-important in considering this amendment. The strictures that have been cast against the justices of the City Court, I do not think can be borne out by the facts, as some of us have had occasion to practice in the City Court of the city of New York can testify. We have had judges of the City Court and we have judges of the City Court to-day, who, by learning, capacity and training, are fit to try cases of equity jurisdiction, as they are fit to try cases of law jurisdiction, without limit. We have had justices of the City Court taken from the bench of that court and elevated to the Supreme Court. We have had a justice of the City Court taken from that court and elevated, in turn, first to the Supreme Court and later to the Court of Appeals, a court which he now adorns.

Mr. Marshall — Is it not a fact that they were elected to those offices and the people had a chance to vote for them, first for the Supreme Court and afterwards for the Court of Appeals? They were not elevated by one fell swoop from the City Court to exercise jurisdiction of the Supreme Court by act of a Constitutional Convention.

Mr. Bernstein — No, surely not, and I do not approve of any such act by a Constitutional Convention or by any other legislative body but I say that men have sat on the bench and are now sitting on that bench who are fit in every respect to try cases of equity jurisdiction. So that is not the objection to the granting of equity jurisdiction to the City Court as proposed to be constituted by this amendment. Neither is the objection to it the objection that has been made that it will destroy the court as a poor man's court. As one of the gentlemen here said, the City Court never was a poor man's court. It is not a poor man's court to-day. Neither is the County Court a poor man's court. They are simply courts of limited jurisdiction, as I understand it, to relieve the Supreme Court of the large number of cases which ordinarily would be brought in the Supreme Court. Now I do see an objection to increasing this City Court jurisdiction in equity while I do not see any objection to increasing jurisdiction in law. The reason is this; we all know that equity jurisdiction both in the courts contained within the city of New York and in the courts outside of the city of New York, is limited. You can reach a case for trial on the equity calendar within three or four months in this great, congested county of New York. You can reach it in less time than that in any of the other counties of New York when you can reach a term of court trying equity cases.

Mr. Byrne — Did I understand that you can reach an equity case in less than four months in any of the other counties?

Mr. Bernstein — If there is a term of court held for the trial of equity cases.

Mr. Byrne — In Kings county you can do that?

Mr. Bernstein — I believe they try equity cases in Kings county all the year, except the summer.

Mr. Byrne — Let me understand. Can you reach a case in less than four months?

Mr. Bernstein — I believe so, I know that you can reach an equity case in New York county in four months — in three months. I have had them reached in that time. Now, then, the purpose of this intermediate court, the court between the poor man's court — the municipal court — and the great Supreme Court, is to relieve the Supreme Court of the trial of cases which properly can be brought in a court of smaller jurisdiction and smaller capacity. We have these county courts doing that work throughout the State. In New York city, where the mass of business is so much greater than it is in any of the other counties of the State, we have a city court.

It is only right and proper that the city court should have jurisdiction over all of the five counties making up the city of New York. It is only right and proper that that court should have jurisdiction to the extent of $5,000 in the city of New York because it is comparatively as small an amount in the limiting or jurisdiction as is $2,000 in any of the other counties of the State. The objection that I can see to Mr. Latson's proposal is that it seeks to take away some of the equity jurisdiction that would otherwise be brought into the Supreme Court and it places it in the city court where it is bound to deprive the man seeking redress in law actions of the relief which it is intended to supply him by this intermediate court. Mr. Chairman, I think that this proposal, if adopted, will simply clog the calendars of the city court and grant practically no relief from the delays which it is sought by this proposal to relieve the people of New York city. I trust that it will not prevail.

Mr. Reeves — Whenever we legislate or constitutionalize in a small way for the great city of New York, we make a mistake. The city of New York, and especially the county of Kings, needs an intermediate court that shall have the equity jurisdiction now taken away from the county court there abolished, and the right to try foreclosure suits, partition suits, specific performance suits, and the right, when it has a case before it, to deal with any equitable question that may come up. There is not a man in this Convention who can know certainly when he takes a case, though it involve only $3,000 and start on a promissory note — who can tell certainly when he takes it into the city court that some

injunction in connection with it, some receivership, some equitable relief, will not be needed before he gets through. This intermediate court ought to have the power to deal with those things. It is said that this may not be a poor man's court. Now I submit that there is a great distinction between a poor man's court and a poor court. We do not want a poor court because it is going to cater to the poor man. If the judges of the City Court of New York are not fit to administer equity jurisprudence, in so far as it might come into that court as it goes over into Kings county, let us put in judges who are fit to take such equity matters as may come. The poor man is entitled to the best judges that we can give him. The three things that ought to be remembered in dealing with this matter are, first, that you may need equity jurisdiction in that court in almost any suit that goes there. You are taking away a great mass of intermediate equity jurisprudence that is being administered, and jurisdiction, in the county of New York. New York city needs in this kind of an intermediate court the best that you can give it and the best judges that you may put there. I say, "All right, take Mr. Marshall's amendment and cut down the amount to $3,000, if you wish, but, at any rate, in Kings county, before you get through with it, fix it to let us keep the equity jurisdiction that we are now enjoying on the civil side of our County Courts."

Mr. F. Martin — At the present time the county court of the Bronx has equity jurisdiction and if this amendment should go through taking away that equity jurisdiction by transferring cases in that court to the City Court judges, we would be in a very bad condition. We would have but one Supreme Court judge to attend to all equity work. I felt when the Judiciary Committee handed this clause to the Convention, that we had a finished product, and I regret to see that there is a difference of opinion even among the members of that committe. I thought that they had disposed of this matter fully in their hearings and I felt certain that some equity jurisdiction would have to be given to the City Court if the City Court was to be of any use to the people of the city of New York. Even though that equity jurisdiction is limited, still the court should have sufficient equity jurisdiction to foreclose mechanic's liens and mortgages, and it would be found necessary to retain that amount of equity jurisdiction in this court. Yes, it has equity jurisdiction to foreclose mechanic's liens, but it has not equity jurisdiction to foreclose mortgages and the County Court has considerable equity jurisdiction. In order to make the court of any use to the people of the city of New York, it will be necessary that it have at least that amount of equity jurisdiction. The County Court has it now. The County Court has it

in four counties and the judges of the county court are not men who are of the standing of the judges of the Supreme Court, although they are very good men. In order to make this court of any use to the people it will be necessary to give it some equity jurisdiction.

Mr. Weed — Mr. Chairman, I think there seems to be some misunderstanding in regard to this subject. The County Courts that exist in the four counties of the City of New York, other than Manhattan, all have unlimited equity jurisdiction in partition matters, matters of dower, matters of foreclosure, matters of redemption of mortgages, matters of specific performance, and various other matters, and as to that jurisdiction it was unlimited. As to monetary jurisdiction, it is limited. Now in the county of Queens — I do not know what the situation is in other counties — we have three special terms during the year. At other times litigants there are able to go into the County Courts and have their cases tried and there has not been any complaint in any of these counties that the judges were not able to perform the duties that are imposed upon them. If the argument of the poor man's court is to have any weight, it does not seem to me that it is entitled to a great deal. It certainly is to the interest of the poor man that he should be able to try his case promptly in the county where the action is brought, and I therefore hope, if the exact amendment proposed by Mr. Latson is not adopted, that some amendment will be offered by which the City Court, if it is to succeed this County Court, shall not only have the equity jurisdiction now given it, of determining the cases that are now pending, but also the equity jurisdiction possessed by the County Courts to decide such cases as may hereafter be brought before it.

Mr. Frank — I offer the following.

The Secretary — By Mr. Frank, on page 28, line 26, strike out the words "and also" and the comma following the words "New York" and after the words "New York" insert the following: "Any such further jurisdiction in civil actions as is now exercised by the County Courts except that it shall have".

Mr. Latson — In the variety of views that have been expressed here I think perhaps a line may be found upon which most of us agree. I am very much impressed with the views of our President, but, in this particular instance, Mr. Marshall has shown the President that his premises were incorrect, for Mr. Marshall is of the opinion that no one would be more surprised at the introduction of this amendment than the judges of the court. Our President seems to proceed upon the theory that the court is clamoring for more jurisdiction. So there is quite a variety of thought expressed here. Now I think that the whole scheme of our juris-

prudence tends towards equity powers upon the bench, no matter where judicial functions are vested. We have given in substance equity powers to our surrogates by statute and here in this Constitution we have constitutionalized those functions. And in this very City Court act, do you realize, Mr. Chairman, that one of these City Court judges down there in Richmond is to be a surrogate and is to exercise these very equity powers that have been vested in his surrogate? And it seems to me incongruous that we should say that here is a court in which we may sue upon a promissory note for five thousand dollars, but if two men contribute each $250 to a little partnership, we may not go in there and settle their differences. It seems incongruous. But this last amendment that has been introduced strikes a middle ground. It adopts the suggestion of Mr. Marshall that there be a financial limitation upon the jurisdiction of this court of three thousand dollars. It adopts the further suggestion of our President and of General Wickersham, that no general equity powers shall be vested, and it suggested that the old equity powers of the old County Court be transferred to and kept alive in this new proposed City Court, if I correctly understand the amendment.

The Chairman — The amendment does not reduce the amount.

Mr. Latson — It leaves it at $5,000?

The Chairman — It leaves it at $5,000.

Mr. Latson — I thought the gentleman introducing it adopted Mr. Marshall's suggestion.

Mr. Frank — I did not know when my amendment was drafted that a proposal would be made to decrease the money jurisdiction to $3,000 and therefore did not include it in my amendment, but I am willing to accept it if it is desirable.

Mr. Latson — I stand corrected. The amendment adopts the five-thousand-dollar jurisdiction and suggests that the powers of the old County Court be vested in this proposed City Court. Mr. Chairman, in view of all that has been said upon this subject, I am disposed to accept that last suggestion as a substitute for the amendment which I proposed.

The Chairman — The gentleman from Kings, Mr. Latson, withdraws his amendment.

Mr. Latson — And adopts this as a substitute.

Mr. Martin — I feel that this matter is a very important one, and unless it can be remedied, I believe the counties would be better off if the County Courts remained. Now, it is a serious matter, as to jurisdiction, both in amount and whether or not there should be equity jurisdiction, and for that reason I move to recommit this section to the Judiciary Committee for further hearing and report.

The Chairman — The Chair cannot entertain that motion in the Committee of the Whole. The Committee has no power to recommit a bill.

Mr. D. Nicoll — I think perhaps I may say a word or two which will serve to clear up a somewhat confused situation. Before I do so I want to say, however, that I am not in sympathy with the remarks of Mr. Marshall concerning the judges of the City Court. I know a great many of those judges, and while they may not have the years or the learning of the judges of the Supreme Court, they are certainly, most of them, at least, well qualified for the positions which they hold, and are now discharging the judicial duties assigned to them to the general satisfaction of the people of the city of New York. Nor am I in sympathy with the proposition to cut their jurisdiction down again to three thousand dollars, after the committee has raised it to five thousand dollars. We raised it to five thousand dollars after the most mature deliberation, and we did it for the purpose of relieving the Supreme Court of the city of New York and Brooklyn, with the belief that many cases would be drawn for trial into the City Court which now are tried in the Supreme Court, resulting in the clogging of its trial calendar. Now, let us consider what this particular situation is, affected by Mr. Latson's amendment and by the amendment re'ating to the transfer of jurisdiction of the County Court to the City Court. This was the problem before the Judiciary Committee. What should we do in the city of New York with its five counties about a court having jurisdiction between the Municipal Court of one thousand dollars and the Supreme Court with general jurisdiction? It was manifest that we had to have such a court. We found such a court in the present City Court of New York, and the plan was and is to extend that court throughout the other counties. Now, it was all right so far as New York county was concerned, and the plan was this; to extend that court throughout the other counties. It was all right, so far as New York county was concerned, but when we came to Richmond, Kings, Queens and Bronx, we were confronted with the situation that the county judges in those four counties exercised both criminal and civil jurisdiction. Now, what did we do with the present judges now in those four counties? We made them judges of the Court of General Sessions of the Peace of the city of New York, and if this amendment prevails they will all become justices of our General Criminal Court, of the Court of General Sessions of the Peace of the City of New York. Now you say this amendment does not affect the sitting judges, at all, because they go out of the County Court into the Court of General Sessions of the Peace. The question really was,

what we were to do with those counties in giving them their civil jurisdiction, and that was one problem and the problem which is now under consideration. We found that our City Court of New York did not have as large a jurisdiction as the County Courts.

Mr. T. F. Smith — Do you recall a statement was made in the Judiciary Committee, that during the time that the $5,000 jurisdiction was exercised, a year and a half, that the business of the City Court doubled?

Mr. D. Nicoll — Yes; the statistics showed that.

Mr. T. F. Smith —And that there was a corresponding decrease in the business of the Supreme Court?

Mr. D. Nicoll — There was. You must recollect there was a time before the statute was declared unconstitutional when the City Court had jurisdiction for a year or two, of $5,000, and during that period we got the benefit of the increased jurisdiction. But now, I come back to the question: We had a City Court in the City of New York, with some but not much equity jurisdiction — very little. With power to foreclose a lien not exceeding $5,000, with power to foreclose so far as the lien on real property created by statute. That was substantially the only equity jurisdiction that the City Court had, but when we turned over to the County Court, Section 340, we found that they had, as all of the gentlemen know, considerable equity jurisdiction, with power to partition real property, foreclosure and redemption of satisfaction of a mortgage upon a real property; then they have custody of the person and care of property concurrently with the Supreme Court on account of incompetency to manage his affairs, lunacy, idiocy, or habitual drunkenness, and the question came up, what shall we do in those counties? Well, our feeling was that, as New York city was situated it would not be any inconvenience at all to persons living in Richmond or Kings or Queens or the Bronx, to go for their equity jurisdiction into the Supreme Court. You must recollect we are not now dealing with distances as they do in the country. The distance from Richmond to the courthouse in Kings or from Queens to the courthouse in Kings or to the courthouse in the Bronx occupies a very small amount of time. Under our system of travel it is very short. So we said, how could it inconvenience any suitor who wanted to foreclose a mortgage or partition real estate to go to the Supreme Court? And that would give the City Court of the county of Kings and the county of Richmond, county of Bronx, county of Queens, the same jurisdiction as the City Court has always had in the city of Manhattan. We find no trouble in Manhattan about it. When we want to foreclose a mortgage we go to the Supreme Court.

Why should we not do it in the Bronx? Or in Kings, or in Queens? If we want to partition property we do it in the Supreme Court. Why should not they do it? I would say it was an inconvenience if you have to travel miles, but we can for five cents go through those different boroughs and we can get anywhere within an hour. So it seems to us, balancing the whole question, that it was better to give this court its limited jurisdiction and to allow the equity power now exercised by the County Courts in the four counties to be exercised by the Supreme Court. Now that is the solution of the subject which the Judiciary Committee arrived at and it seems to me a sensible one.

The Chairman — The question occurs on the amendment offered by Mr. Marshall, the effect of which is to reduce from five to three thousand dollars the jurisdiction of the City Court. All those in favor of the adoption of the amendment will signify by saying Aye, opposed No. The amendment is lost.

The question now rises upon the amendment offered by Mr. Frank.

Mr. Marshall — Mr. Chairman, may we have the amendment read.

The Chairman — The Secretary will read the amendment for the information of the Committee.

The Secretary — By Mr. Frank, on page 28, line 26, strike out the words "and also", and the comma following the word "New York", and after the word "New York" insert the following, "and such other jurisdiction in civil actions as is now exercised by County Courts except that it shall have".

Mr. Wiggins — Mr. Chairman, as a matter of information, as to whether that is the amendment which Mr. Latson accepted in lieu of his own?

Mr. Latson — I just walked to the desk and looked up that matter, and I think there is something which has been overlooked, and I think it should be so drawn that the jurisdiction of the old County Court should be vested only in that branch of the City Court that was established for the respective counties. In other words, as that is drawn, and I don't think Mr. Frank intended it that way, the city judge sitting in the county of the Bronx would have the jurisdiction of the old County Courts throughout the entire city, in each borough. I do not think that is what Mr. Frank intended although the language conveys that thought, and I don't approve of it in the form in which it has been presented. Mr. Frank is about to hand up to the desk a further amendment covering that point.

Mr. Wickersham — Mr. Chairman, as I understand the objection to this amendment, it is to devolve upon this City Court all

of the civil jurisdiction now vested in the County Court and to that, of course, the Judiciary Committee is opposed, as it is entirely at variance with this scheme of distribution of jurisdiction.

Mr. Latson — Mr. Chairman, the question that I have raised has been considered by Mr. Frank and he considers that the language which he has submitted is sufficient and that it does not raise the objection that I have stated, and therefore I withdraw my amendment and accept his.

The Chairman — The question is on the amendment offered by Mr. Frank. Those in favor of the amendment will please rise. Those opposed, will please rise. The Clerk will announce the result.

The Secretary —Ayes 54, noes 52.

The Chairman — The amendment is carried. The question now occurs upon the adoption of Section 21 as amended.

Mr. Martin — Mr. Chairman, does that include the amendments that were heretofore made to that section?

The Chairman —All the amendments.

Mr. Martin — I mean on Saturday.

The Chairman — Yes, they are all a part of Section 21. The question now occurs upon Section 21 as amended heretofore and to-day. Those in favor of its adoption will signify by saying Aye, opposed, No. The section is adopted.

Mr. Coles — I move to reconsider the vote by which Section 19 was adopted.

Mr. Wickersham — I object.

The Chairman — The gentleman is in order. The gentleman has a right to make a motion.

Mr. Coles — I move because of the fact that at the time there was a misunderstanding apparently by some of the gentlemen who voted in favor of an amendment to that section. The matter under consideration is on page 25, at lines 19 and 20. An amendment was introduced leaving out the word "qualifications" and the word "and" between "classifications" and "duties". I wish to make a motion to amend that section.

The Chairman — Well, the motion first is to reconsider.

Mr. Coles — I wish to state briefly the reasons. The reason is to restore the word "qualifications" and also to substitute the word "may" for the word "shall", to make it permissive and not mandatory, to meet the condition which confronts us in Nassau county and the counties adjoining the city of New York. It is merely so that we may have such legislation as shall provide for qualifications for our justices of the peace and yet not apply to any other section of the State.

The Chairman — The question occurs upon the motion made by the gentleman from Nassau, Mr. Coles, to reconsider the vote by which section 19 was adopted.

Mr. Stowell — I object to the consideration, Mr. Chairman.

The Chairman — Mr. Stowell, what is the point?

Mr. Stowell — That it is out of order at this time; that the matter was disposed of three or four days ago; that more than one legislative day has passed and it is too late to do it without unanimous consent.

The Chairman — My recollection is, Mr. Stowell, that the section 19 was adopted on last Saturday and that there is no legislative day intervening.

Mr. Stowell — I thought it was last Friday.

The Chairman — The Chair's recollection is quite clear that it was on Saturday. Those in favor of the motion to reconsider the vote by which section 19 was adopted will signify by saying Aye. Those opposed, No. The motion is lost.

Mr. Coles — I ask for a standing vote.

The Chairman — The Chair had announced the result when the gentleman made his request for a division; but we do not want to have any question about these matters. Those in favor of the reconsideration of the vote by which section 19 was adopted will please rise. Those opposed will rise. The motion is defeated.

Mr. Heaton — I move to reconsider the vote by which section 18 was adopted, and I do not do that to throw anything into this Convention at this hour, but because of what is a clerical error which was made in inserting two brackets which would provide that where a special county judge or a special surrogate should be elected, his time for performing his duties would not be limited to the time when the surrogate or the county judge should be limited, because of the striking out of the sentence " in cases of their inability or a vacancy, and in such other cases as may be provided by law". Unless the brackets are stricken out, the officers would be elected almost for life.

Mr. Wickersham — Mr. Chairman, these brackets were put in because it was considered at the time that where it was provided that the Legislature might appoint or authorize the selection of additional surrogates and county judges in case of inability, of a vacancy, or in such other cases as provided by law, it would be taken care of. Judge Heaton pointed out that the words " in case of their inability or in case of a vacancy," serves a very useful purpose in legislation covering similar matters, and that if it was stricken out entirely it might be taken as an invitation to the creation of duplicate offices. Therefore, we have no objection to restoring it just as it was.

The Chairman — The question is upon the motion to reconsider the vote by which Section 18 was adopted. All those in favor of the motion to reconsider signify by saying Aye, those opposed, No. The motion is carried.

Mr. Heaton — Mr. Chairman, I now move to amend by striking out the brackets in lines 11 and 12 of Section 18.

The Chairman — The question is upon the motion to amend made by Mr. Judge Heaton. Those in favor of the motion will signify by saying Aye. Those opposed, No. The amendment is adopted. The question now is upon the adoption of Section 18 as amended. Those in favor of the adoption of the section as amended will please signify by saying Aye. Those opposed, No. The section is adopted.

Mr. Wickersham — I now move the adoption of Article VI as amended and that it be reported to the Convention for third reading.

The Chairman — You have heard the motion of General Wickersham. Those in favor of the adoption of the article as amended and reporting it to the Convention for third reading please signify it by saying Aye. Those opposed, No. The motion is carried.

Mr. Wickersham — I now move, Mr. Chairman, that the Committee do rise, and report the bill as adopted.

The Chairman — The question is on the motion that the Committee do now arise and report special order as having been adopted. Those in favor please signify it by saying Aye. Those opposed, No. The motion is carried.

(The President resumes the Chair.)

The President — The Convention will come to order.

Mr. Wagner — The Committee of the Whole has had under consideration for several days Special Order No. 61, and ask leave to report it for the favorable consideration of the Convention.

The President — The question is on agreeing to the report of the Committee. All in favor of agreeing to the report of the Committee of the Whole will please say Aye, contrary No. The report is agreed to and the Proposed Amendment is advanced to the order of third reading.

Mr. Schurman — Mr. Chairman, I ask the indulgence of the Chair and of the House for a personal statement. There was a roll call on Saturday between half past twelve and a quarter to one, and I happened at that time to have stepped out of the House, and I wish to have it appear on the record that I was here throughout the forenoon in the Chamber until after mid-day, that I was in the city at the time the vote was taken but out of the chamber.

The President — The record will show the statement by Dr.

Schurman. The Convention stands adjourned until 10:00 o'clock to-morrow morning.

Whereupon, at 10:30 P. M. the Convention adjourned to meet Tuesday, August 24, 1915, at 10 o'clock A. M.

TUESDAY, AUGUST 24, 1915

The President — The Convention will please be in order. Prayer will be offered by the Rev. J. Addison Jones.

The Rev. Mr. Jones.— Let us pray. Oh Lord, our God, the days that come to us are of Thine appointing, for our hearts are in Thy hand, and Thine is this mortal life of ours. We thank Thee for all the days that are behind us in which Thou hast been the inspiration of our best desires and the support of our noblest endeavors. We thank Thee for whatever of worth we have attempted or accomplished, for whatever of finer strength, of mellower wisdom, of broader thought, or of deeper charity, which the experience of the years has wrought in us. And now we would hallow the beginnings of this new day in this moment of grateful praise to Thee, the giver of all good, and of fervent prayer for the continuance of that favor. Grant that the wisdom which cometh from above which is pure and peaceable, may guide always the counsels of those who seek to establish justice, promote peace, and to foster fraternity. Help us to do our best in the realm which Thou hast given us, and with the advantages and peace that fall to our share. So may we fill our place faithfully in this world, and contribute some influence of enlightenment and of enrichment to the race of which we are a part. For Thy Great Name's sake, Amen.

The President —Are there any amendments to be proposed to the Journal as printed and distributed? Communications from the Governor and other State officers. The Chair lays before the Convention a communication from Wm. Pierrepont White of Utica, which will be referred to the Committee on Public Utilities. Also a communication from the officers of the College of the Church of Christ, which will be referred to the Committee on Education. Notices, motions and resolutions. The Secretary will call the roll of districts. Reports of standing committees. Reports of select committees. Third reading.

Mr. Wickersham — Mr. President, I move that the order of third reading be postponed to-day.

The President —All in favor will say Aye. Contrary, No. The motion is agreed to. Unfinished business of general orders. Special orders. The Convention will go into Committee of the

Whole for consideration of the special orders of the day. Will Senator Charles J. White take the Chair?

Mr. C. J. White — Mr. President, I beg to be excused.

The President — The Chair will ask Mr. Hinman to take the Chair unless he wishes to take part in the discussion.

Mr. Hinman — I do desire to take part in the discussion of one of the proposals, Mr. President.

The President — Mr. Lindsay will take the chair.

(Mr. Lindsay takes the Chair.)

Mr. Lindsay — The Committee of the Whole will come to order and take up consideration of General Order No. 49.

Mr. Wadsworth — The amendment which is now to be considered by the Committee is the only amendment which has been reported favorably from the Committee on Charities. The Committee on Charities gave it, in common with the other amendments coming before it, very careful and full consideration, and decided that it was the only amendment which should be reported favorably. It simply writes into the fundamental law that which is already statutory law in regard to the management of the State hospitals, and the Committee believes it was a wise and proper thing to do to remove the management of the State hospitals, at least for the next twenty years, from what is practically the battledore and shuttle-cock of politics and of fads and faddists. I can very earnestly recommend this amendment to the Convention, and I will now yield the floor to Mr. Steinbrink, the gentleman from Brooklyn and the author of the amendment.

Mr. Steinbrink — May I first offer an amendment which does not change in any particular this proposal, but which corrects a possible error in English.

The Secretary — By Mr. Steinbrink. Page 2, line 6, after the word "managers" insert "and shall have".

The Chairman — The question is upon the adoption of the amendment offered by Mr. Steinbrink. Are there any remarks? All in favor of the adoption of the amendment say Aye. Opposed No. The amendment is adopted.

Mr. Steinbrink — Now, Mr. Chairman, and Gentlemen: This proposal was originally offered by me at the request of the authorities, the boards of managers and the employees of the State hospitals for the insane, and the matter in italics on page 2 shows as plain as any words of mine in explanation could possibly show, just what is sought to be accomplished by this proposal. It is as Mr. Wadsworth has said, to write into the fundamental law exactly what is the fact to-day. Perhaps the best argument I could make to this would be to adopt the words of Vice-President Schurman when he presented to this Convention the Educational

Article. He said the State had been committed to a policy with reference to the education of children; that we all recognized that, and that we all recognized the obligation that went with it and that the amendment reported by the Educational Committee was really, to adopt the words of Mr. Nicoll, to constitutionalize the *status quo*. Now, that is exactly what this proposal does. As against this proposal there was presented to the Charities Committee another one which sought to introduce into the State a central board of control, and I must necessarily touch on that and anticipate slightly an argument which I am told is to be presented by Mr. Hinman, in order that the two questions may be considered by this Convention. The central board of control idea has for its ultimate object the grouping or centralizing of all of the wards of the State, exclusive of Indians, under one central board. In other words, the central board means that charities, State hospitals for the insane, and prisons are all to be put under one central board of control.

Now, those who have had experience in the management of State hospitals, or are in any way connected with charitable institutions, whether they be orphan asylums or other institutions, and those who are interested in the work of correction, the prisons and reformatories, were all opposed to the idea of a central board of control; and that was no better set forth than in a brief which was submitted and sent, I believe, to every member of this Convention by the State Charities Aid Association, and prepared by a special committee on constitutional revision. That Committee had as its Chairman the Honorable Joseph H. Choate. The other members of the Committee were George F. Canfield, Charles S. Fairchild, Dr. Lee K. Frankel, Eugene A. Philbin, Hon William Cary Sanger and Homer Folks, Secretary. And one of the opening paragraphs in that brief in opposition to the central board of control idea, and therefore, in support of the proposal which is now before the Convention, reads as follows: "Let us consider first the cost of maintaining the State hospitals. There are thirty-three thousand patients in these institutions. They are maintained at an average cost of 57 cents a day, including the expense of food, light, heat, nursing, medical treatment and other current expenditures. It is a matter of common knowledge that in these particulars the patients are well cared for. The hospitals have been conspicuously free from scandals and are generally regarded as the most humane and successful institutions of the kind in the United States." That this result has been accomplished at a cost of 57 cents per day is the best refutation of any suggestion of extravagance or mismanagement and further on in the brief I found this clause: "State hospitals for the insane are

primarily curative institutions, and their management and control require special training and experience, and it is because in the work for the insane that special knowledge is required, that the idea of a central board of control is impossible and impracticable." Now, on the first of July of this year, there were 36,500 patients in the various State hospitals scattered throughout the State. These State hospitals, from the statistics furnished me by the Comptroller's office, cost each year — I am giving the figures for the last year,— $7,406,000. Now, that is exclusive of construction cost. Through the Department of Charities, there was expended $3,274,000, while through the Prisons Department there was expended $1,688,000. So you will see that almost two-thirds of the total disbursed through the departments of Public Charities and Corrections and Hospitals, almost two-thirds of it was for the hospitals alone. And in view of the fact that these hospitals to-day have attained a standard and a plane which is not equalled in any community in the United States, there remains the very good reason for maintaining the same system in the future. Now, I believe that I am justified in saying that the report of the Committee on Governor and Other State Officers, at its introduction, uses the words, with reference to the Secretary of Charities and Corrections that the department was to be administered by. I am told by the genial Chairman of that Committee that those words were put in Section 13 through an oversight, and with a view to having uniformity throughout the section, and that the words "administered by" are to be taken out and instead the opening sentence of that section will read, "The head of the Department of Charities and Corrections shall be the Secretary of the Department of Charities and Corrections." Now, with that change made, this proposal fits in with the entire scheme. There is no desire, there is no wish on the part of those interested in State hospitals to avoid supervision or inspection from any central head, whether that central head be the secretary appointed by the Governor, or whatever it may be. Nor do I understand that there is any objection on the part of those interested in this proposal to having an audit and examination of all their accounts. So that, while this proposal leaves the fiscal control and management of State hospitals in the State Hospital Commission, it does not put it beyond the pale of examination, supervision or inspection of other departments. There is no wish of that kind on the part of anyone. The desire is, however, to maintain and to retain the present high standard. And one other thought that occurs to me and that I think should be made clear on this Record is this: That where this uses the phrase, "leaving to the State Hospital Commission the fiscal control and management, except in so far as such management may now or hereafter

be delegated by the Legislature to local boards of managers," we necessarily had to use the phrase " local boards of managers " as indicating the body to whom management might be delegated. There is no thought, there is no desire on the part of anyone to constitutionalize the local boards of managers.

Mr. Whipple — I want to get the information, if I can, whether or not the Proposed Amendment wipes out, does away with the State fiscal officer and gives to the boards of managers the power that the State fiscal officers have had.

Mr. Steinbrink — I don't so understand it, and there is no such intent. The point is this, if I may make it clear,—

Mr. Whipple — Just one more question. What does the term " management and fiscal control " — " fiscal control," what do you mean by that?

Mr. Steinbrink — Whatever the appropriation is for that department, it will be spent through that department, but that department must necessarily in the scheme of government that is here planned account back to the head, namely, the Secretary of Charities and Corrections, and must at all times remain subject to the supervision and inspection not alone of the Secretary of Charities and Corrections, but also, if there be an auditing function placed anywhere with any officer, it will be subject to that as well.

Mr. Whipple — What do you understand have been the duties of the so-called State fiscal supervisor since that office was established?

Mr. Steinbrink — Well, which State fiscal officer do you refer to?

Mr. Whipple — I mean the office that was held by Mr. Bender of Albany under the Higgins regime and which has been continued ever since. What were his duties, as you understand them?

Mr. Steinbrink — Why, he had the name of State Fiscal Supervisor, as I recall it. Just what his duties were in connection with that department I do not know.

Mr. Whipple — I was simply trying to find out, Mr. Chairman, why they put in here the words " fiscal control," how it interferes with the present situation.

Mr. Steinbrink — It does not interfere; it perpetuates the present situation, and the reason for it I made clear, I thought, at the very opening. It is because to-day these hospitals are maintained and supported at a cost per capita less than any similar institutions in the United States. In fact, eighteen states of the Union have copied the New York system and many states of the Union have come into New York and have taken from our State hospitals employees — doctors — and taken them to their states in order that the same system might be introduced and per-

fected. When I was asked the question, I was about to explain that there is no desire to constitutionalize the local boards of managers nor do we want to interfere with the power of the Legislature now or hereafter, if any occasion therefor should arise, to dispense entirely with the local board of managers in any institution. At present these local boards of managers are made up usually of leading citizens in the vicinity of the hospital. They serve without pay. They, of course, are responsive and responsible to the State Commission, and that we want to retain. I do not think that I could present any stronger argument than to adopt the language of the report submitted by Mr. Wadsworth when this amendment was reported to the Convention.

The Chairman — The chair will state that the gentleman's time, ten minutes, is up.

Mr. Steinbrink — May I ask then for unanimous consent to have two minutes longer to answer Mr. Tanner's question?

The Chairman — If there is no objection.

Mr. Tanner — In response to a question directed by Mr. Whipple, relating to the fiscal supervisor, you said that the object of your amendment was to perpetuate the present system. You do not mean that this amendment which is proposed would constitutionalize the fiscal supervisor, but would leave it to the Legislature?

Mr. Steinbrink — Absolutely.

Mr. Tanner — And this provision in italics in line 6 of your amendment, relating to the local boards of managers, in your opinion, is entirely consistent with that provision of Section 13 of the Report of the Committee on Governor and Other State Officers, which reads as follows: "All the existing boards of managers of the institutions referred to in this section are continued at the will of the Legislature"?

Mr. Steinbrink — Absolutely, Mr. Tanner. I don't think there is any doubt but what the Legislature, if it saw fit and saw cause therefor, could remove the local boards of managers for misconduct or any other cause. All we desire to do is to make certain that the present State Commission in Lunacy or State Hospital Commission will go along with its work on the same high plane that they have for twenty-six years past.

Mr. Hinman — I have been very much interested in this proposition because I have been giving it some study for the last year or two. It has seemed to me that the fundamental evil of our government in this State is the evil of complicated government. If that exists in any branch of the State government, it exists in that branch which deals with the State's interest in and management of its institutions. And for that reason I have felt that if the Committee on Governor and Other State Officers was to do

any other work that was to be important to the State it was to provide for the unification of the management of the institutional work of the State of New York which has been spread over the entire State, as far as the management of the various groups is concerned, and so far as the management of each separate group is concerned, and particularly the charitable group and the prisons, and my proposal was that we should have a unification system, that we should have a State institution board which should shape the general policies of the State with reference to the medical care, with reference to the industries developed in the institutions, with reference to the custodial care, with reference to the education of the dependent, defective and delinquent wards of the State; general policies as to correction and as to punishment. As a clearing house for operating standards; as a clearing house for financial standing, and as a clearing house for betterments and new construction of institutions, and the providing, so far as this board was concerned, not of administration by the board itself, but by the appointment of commissioners by the board which should be administrative heads of the several groups, each segregated, but each responsible to this board, similar to the board of regents which appoints a commissioner of education.

Now, the Committee on Governor and Other State Officers has not seen fit to make the recommendation for the appointment of such a board, and I yield to the Committee on Governor and Other State Officers in that respect; but in their report, they have left the matter open to the Legislatures in the future, in the next twenty years, as they see the light and as this great institutional work reaches a still wider field, the Legislature may have the opportunity to provide a unification system which will be helpful to the State, helpful to the institutions as a whole, helpful to each group and helpful to the wards of the State; but if not provided by constitutional rule, I say the way should be left open for future administrations to deal with the matter. I don't expect everyone to agree with me as to the present advisability of providing a unification system, but I beg of this Convention that it shall not be so unwise as to prevent in the next twenty years, *imperium in imperio*. The executive department heads provided for in the report of the Committee on Governor and Other State Officers shall be stripped of power by this autonomy within the institutional business of the State. When we go back as far as the last Convention, this institutional work was in its infancy. It was a fairly small proposition compared with the present condition, and the Constitutional Convention of 1894 was silent except so far as the prisons were concerned, and provided a board of visitation and inspection over each of the other groups and of the

prison group as well. But since that time institutional work has developed into the largest single item of importance in the State's budget, and I desire to call your attention to a summary of the expenses of the various branches of the State's work. I find that out of a total budget of fifty million dollars in 1914 the institutions of the State cost the State about twelve to fourteen millions. In other words, twenty-five per cent of the entire State budget has been expended by the State for the benefit of about one-half of one per cent of the membership of the entire population of the State. It has grown to be the largest single proposition in the hands of the State to-day. We all know the present conditions, we all know the conditions have been bad for a number of years. We have made effort after effort to clean it up but we have been unable to do it, and we have had superintendence and a commission, a commission on new institutions, a parole board, a probation board, a State prison commission, having the power of visitation and inspection, and I would like, if I had the time, to relate in detail to you the number of boards that have to do with the charitable institutions of the State, but I haven't the time. The worst mess of the lot is in the charitable institutions. I admit that the hospitals for the insane are in better condition but they are better because they seek to do what I want the State to do, and if they shine, they shine only by comparison.

Our experience with the regents of the education department has been a most excellent experience and it has grown out of one of the most tremendous struggles the State ever saw, the struggle between the regents and the superintendents of education that had provided for the unification of that system. And it has developed into the best known department, and is recognized as such in the State government. Now we are dealing with a business proposition at the hands of the government. We have been specializing in all phases of this work and it has led to extravagance, and it has led to mismanagement in conducting the affairs of the care of the wards of the State for which our system exists. There are those who would say, why should we unify these three groups? I say that there are common prob'ems that run through them all: There is the question of insanity which runs through all the groups. We have in the hospitals for the insane those who have been declared to be insane; we have in the charitable group the idiots, the feeble-minded and the epileptics, some of them in the early stages of insanity, some of them on the borderline, and in the prison group we find the criminal insane, housed at Matteawan and Dannemora, I believe. The problem of insanity is one of the underlying problems in all our treatment and care of the wards of the State, either because they have been found to be insane or

because they are on their way and through the problem of the industry there is a tremendous problem not only in running these institutions economically, but in proventing to a large degree purchases outside of things that could just as well be developed in the institution, and also from the standpoint of the development and training of the wards of the State in these industries, so that, at the expiration of the time during which they are inmates of the institution, they may be enabled to go out into the world and earn a livelihood. There is then this problem of the industries, and we find a jealousy existing between the various groups: one group does not care to use the products of another group, and we have tried to unify that by a board of classification which has been very unsuccessful because of this jealousy, and you will never get rid of that jealousy until you have provided a unification scheme. Then there in the question of reformation which is common to all but the hospitals of the insane, and then there is the question of custodial care common to all of the groups, and then there is the question of medical care common to all the groups; there is the question of inspection, which is common to all and then, from the standpoint of the exchequer of the State, there is the financial problem which is common to all, the question of maintenance. Mr. Chairman, I have an idea that I may be the only one speaking in opposition to this proposition, and I would very much like to ask an extension of my time.

Mr. Wadsworth — Mr. Chairman, I don't think I used all of my time, and I will be glad to yield four or five minutes of it to the gentleman.

Mr. Hinman — There is the common problem of providing food and clothing and other supplies; the methods of purchasing which are common to all; the problem of the interchange of industrial and farm products; the problem of the salaries paid to employees, which is common to all. We should have a standardization of selection and salaries of employees in all the groups of institutions. We haven't it to-day. Superintendents and boards of managers are common to all, except the prisons.

No reason why the same problems should not be met in the same way in all the institutions, and then when we come to the question of repairs and betterment and new buildings, in connection with the conduct of the State's business and the care of its property under the head of institutional business of the State you will not be confronted with the abnormal situation which we have had for the last ten years, when we have sprouted one State's prison and then another prison and then another one; when we have sprouted a State hospital for the insane, and it has come to naught; when we have sprouted four charitable institutions and have done nothing with them. So that in the last ten years

we have sprouted State prisons, a hospital for the insane, four charitable institutions and have not completed a single one of them, because we have not had any unity of action.. Now, we have heard a good deal about these boards of control, and I dislike to say it, but I believe this Convention has been misled into believing that I was standing for the kind of a board of control which has been tried out in the West and not found satisfactory. In our Western states which have been criticised, they have not only attempted to supervise the work of the institution, but they have actually tried to manage them in every detail, and I have made no such proposal. In the State of Illinois, for instance, they have no boards of managers, and they have tried to manage from a central point all of the institutions. The power was centralized absolutely in a board of control. My proposal is that we retain the board of managers and its advocates, giving to them more power, more power for the purpose, local internal management, and less interference in matters of detail. Of course a board of control located at one point and attempting to deal in matters of detail is not likely to be successful. We might just as well expect the Regents of the University to go into every school district of the State and manage every detail of education in that school district, as to expect the board sitting here in Albany to try and manage every single detail. Don't let us be bewildered in any way by any comparison with the boards of control that have been found unsatisfactory in other places.

Now, let me call your attention to the inconsistency of those who now contend that we should not have any centralized control. We have centralized control to-day in the hospitals outside of the fact that we have boards of managers. My contention is that we should wipe out unnecessary machinery. Control is centralized in Albany now. Under my proposal instead of having several purchasing committees there would be one; instead of having several pieces of machinery for handling estimates there would be one; instead of having several sets of inspectors and voucher clerks and estimate clerks and stenographers all along the line, we would have but one. Now those who have been arguing in favor of the system which is contended for in this Proposed Amendment have shown their inconsistency in the last year. They are showing their inconsistency now. If this system is so good why isn't it extended to the prisons and to the charitable institutions, and if it is not a good system, why not inquire as to the cause? I say that the chief cause why this group shines in comparison with the others is because it has had less machinery and control at Albany to deal with; because of the advance in the medical science and the treatment of mental diseases which has been so great in the last few years; because of the great strength and the long experience and

the great ability of those superintendents of these institutions who are, and who have been the backbone of the system. It has not been the men at Albany who have been able or capable of carrying on this work. Why, you will find that they have only one medical officer on this board at Albany. The other two who represent the majority of the commission, have all along the line been men who have come there unprepared for the work, who are laymen and have not had experience in the handling of insanity. The reputation of the system for efficiency has been established by the superintendents of the institutions and those institutions can be continued whether you had this board at Albany or not. Now, Mr. Folks, who has prepared a brief and to which reference has been made, also made on address, and he said that one salaried officer in the prison group has been far less successful than in the charities group with its mess of interference or the hospitals, with its three-headed commission. And yet in the Legislature he, with others, who are now attacking this proposal, appeared before the Legislature and tried to have a bill passed providing for a single-headed hospital commission and a single-headed charities commission, and here they are opposed to boards of control, or boards of centralization in Albany of all purchasing, opposed to all fiscal control, and yet this hospital commission has absolute control of the purse strings, has control of medical treatment, has control of the appointment of superintendents, has control of the salaries of employees, has control of the purchases in the institutions and of building improvements, and they are now contending for a three-headed hospital commission, undisturbed, although last winter they wanted to disturb it by drafting and preparing and presenting and appearing before a committee in support thereof, a bill providing for a single-headed hospital commission. While contending that a three-headed hospital commission is perfect and must not be disturbed, they now come before this Convention and plead for a single-headed charities commission and the form of control which they have recently condemned as less successful of the three methods.

What conclusion can be drawn except that they have placed themselves in a perfectly indefensible position. I ask the attention of the Convention for one minute more, if I may, to say that I am no pioneer in speaking on this subject. I merely wish to refer to the fact that the National Committee on Prisons and Prison Labor has sent out a pamphlet in which they contend that a board or officer who shall have charge of the charities and corrections, charitable and correctional institutions, is the only single system which will work satisfactorily, and it is in support of a single-headed commission. I have not the time to read all the

arguments in favor of it. I believe the Committee will take my word for it that they have come out flat-footedly for it, for this kind of a proposal. I desire to call your attention to the fact that as far back as 1908 Mr. Simon W. Rosendale, former Attorney-General of this State, at present and for a number of years past a member of the State Board of Charities, was the presiding officer at a conference of charities, and as such presiding officer he delivered an address in which he called attention to this very situation, and in one short paragraph he says: "The situation as to the constitutional boards and their relation to the State institutions may be summed up in the following general statement: The State Prisons Commission has no relation with the reformatories or training schools, excepting the right of visitation to institutions in which there are adult prisoners; the lunacy commission has in its charge hospitals for the insane, but no institutions for the idiots, feeble-minded and epileptics; even as to the criminal insane there is divided authority between the superintendent of prisons and the Commission in Lunacy. The jurisdiction of the State Board of Charities covers reformatories and training schools for boys, training schools for girls and reformatories for women, but not reformatories for men. There are other incongruities which will appear later." And then in making his recommendations, he says: "It seems clear, however, that if there were one well-equipped department of charities and correction it could have charge of both general and special matters; and the State be benefited by the expert services which such a department could furnish, in addition to securing systematic and enduring records. The co-ordination and, so far as practicable, the unification of the State's charities and corrections would prove beneficial in many ways." And he cites but two of them. If I may have the indulgence of the Committee, I desire to cite the two illustrations of improvement and betterment which he cites: "First. To the State and to the large unfortunate classes which have to be provided for, resulting in a better and more scientific classification and treatment of the inmates." "It is difficult," he says, "to find the particular place for border-line cases, or for cases suffering from various phases of abnormality, and to make transfers as occasion demands. The departments are independent of each other, and there are no means of transfer by direct departmental action." This would be remedied were there broader and co-ordinated or centralized authority. "General policies appertaining to administration could also be adopted. While there are necessarily great variations in the treatment and management of these classes there are certainly many which could be treated on similar lines. For example, there are general policies applicable

as well to prisons as to other forms of custodial segregation — such as for the insane, the idiotic and the feeble-minded. There must be lines of medical and surgical science which would find more or less application under one general oversight to the various classes."

The Chairman — The Chair dislikes to interrupt but there are only about 20 minutes left for debate — 25 minutes, and the gentleman has occupied double the time allotted. The Chair has been asked to enforce the rule. Unless we intend that the debate shall be very limited for any one else we must adhere to the rule.

Mr. Hinman — Mr. Chairman, I regret that this Convention has seen fit to take so much time with matters which seemed to me of such infinitesmal importance as compared with this, and that we should have been given simply an hour to handle a problem which is the largest problem before this Committee, but if that is the will of the Convention I shall content myself with offering an amendment, which is the proposal of the Committee on Governor and Other State Officers, and which, I think, is preferable to this proposition, because it leaves to the Legislature the opportunity to provide a unification system in the future.

The Secretary — By Mr. Hinman. Substitute the following: "The head of the Department of Charities and Corrections shall be the Secretary of Charities and Corrections. The State Board of Charities, the State Commission in Lunacy, to be hereafter known as the State Hospital Commission, and the State Commission of Prisons are continued with all the powers vested in them by the Constitution on the first day of September, nineteen hundred and fifteen, and with such powers as have heretofore been vested in them by the Legislature, subject to the power of the Legislature to increase, modify or diminish the same by provisions not inconsistent with this section. The Secretary of Charities and Corrections shall have power of inspection and supervision of all State Charitable Institutions, State Hospitals for the Insane, State Prisons and other State correctional institutions."

Mr. Whipple — Mr. Chairman, we are unable to hear the clerk read. I suggest that we have order or that the clerk raise his voice, or that we ask Delegate Kirby to go in and read.

The Secretary — "He shall take care that all the laws relating to such institutions are faithfully executed and he shall perform such other duties in relation to the charities and corrections of the State and of any civil division thereof as may be imposed upon him by law. All the existing boards of managers of the institutions referred to in this section are continued at the will of the Legislature."

Mr. Schurman — Mr. Chairman, in dealing with one of the

most important subjects to come before the Convention, involving thirty-six or thirty-seven thousand wards of the State, on whom we are spending one-seventh of the revenue of the State, in whose care we are employing 39 per cent of the employees of the State, there are a number of gentlemen who desire to speak and I think they ought to be heard. I move that this Committee rise, report progress and ask for an extension of time.

Mr. Barnes — I second the motion.

Mr. Wickersham — Mr. Chairman, I beg to remind the delegates that if they had been attentive to their duties in this Convention last week it would have not been necessary to establish the time limit which was adopted by the Convention. The gentlemen were given fair warning that it would be necessary to limit the time of debate if they did not attend the meetings of this Convention on Friday afternoon and Saturday last. I hope, Mr. Chairman, the gentlemen who did not think it worth while to be here on Friday afternoon and Saturday last and on Monday morning will not press this application for additional time, thus rendering it more difficult to finish the program which is before the Convention. Dr. Schurman, I do not refer particularly to you because you were here most of the time. I am only speaking for those members who were not here, and many of whom no doubt desire to speak at length on this question.

The Chairman — The question is upon the motion that the Committee rise, report progress, and ask leave to sit again with the time extended for debate. All in favor of the motion will say Aye. Opposed, No.

Mr. D. Nicoll — Division.

The Chairman — A division is called for. All in favor of the motion will rise and remain standing until counted. The gentlemen will be seated. Those opposed will rise. The motion is lost.

Mr. Bell — Mr. Chairman and Gentlemen: After listening to the stern philippics of Mr. Hinman, I think I need to say a few words to allay the fears of the delegates to this Convention and to explain why we decided in the Committee to report Mr. Steinbrink's amendment. In the first place, there is nothing in the amendment which interferes with the general scheme that is now being prepared by the Committee on Governor and Other State Officers. As Mr. Steinbrink pointed out very clearly, and as Mr. Tanner agrees, there is nothing which should cause the fears in the mind of Brother Hinman which appear to trouble him so much this morning. Now, the Charities Committee approached this question, not so much in the light of a scheme of government, for, after all, a scheme of government is a scheme to make happy the people living under it. The committee approached the question

of charities as a scheme for the welfare of the people who were to be benefited thereunder. It approached from the bottom up, not from the top down. The question was human, not a political one, and it was the wards of the State that appealed to the minds and the hearts of the members of the committee on this subject, apart from any possible question of political advantage or political science, except in so far as that science should administer to their welfare. The Charities Committee, therefore, held extensive hearings. They caused men representing every walk of life and those familiar with the charities and the physical, mental and moral welfare of the wards of the State to come before them. They had doctors, they had philanthropists and they had priests. After doing that they went on a tour through the State and saw how matters were being administered in the various hospitals and various asylums. Let me answer one statement made by Mr. Hinman right here. The reason why in this amendment offered by Mr. Steinbrink the question of the care of the insane is being kept from the care of the feeble-minded, is that, after the most careful thought, the Committee on Charities decided that the care of the feeble-minded should remain still in the possession of the State Board of Charities. The reason for that is this: It would take longer than any one could take to explain here to show you the great, growing study of the care of the feeble-minded. It would be a great help to this committee, as well as to every one of you individually, if you would take the trouble to see the immense amount of care that is being devoted to this newly-discovered branch of the mentally deficient. The question is an appalling one. It concerns every object of care in this State. The State Hospital Commission, which deals with the insane, said it did not want to have anything to do with the feeble-minded. They said they wanted to leave it where it is. They said it is still in the embryo stage and will require years and years for people to understand it. In fact, it was shown that the understanding of the care of the feeble-minded is so limited that even the statistics do not convey any adequate idea of it, but rather leave it to the imagination. Gentlemen, the reason why we did not put it in with the State Hospital Commission, as I say, is because it is such a great question that the State Hospital Commission thought it best to leave it where it is now, gradually evolving under the State Board of Charities. The reason why the Steinbrink amendment was reported, as I say, is an outgrowth of the study which was made of the subject from the bottom up. They came to us with this. We knew nothing about it. How many men in this Convention would know what that proposition means without proper study? We therefore went through with these hearings and we ended up by going through the hospitals. The result of that is

that we have found, as far as we can see, during the past years that this State Hospital Commission has been working, it has been attending to its duties in a careful, sincere, helpful and, most of all, in an economic way. I will withdraw that. I should say that the economic feature was not the most important, but the most important thing is to make provision for these poor people in the best way possible, and incidentally it has been economical. All they asked was that this amendment should leave them where they are, untrammeled by future legislation, legislation which is often started at the instance of those with sinister motives who do not understand what they are seeking to administer and who attack it more for the purpose of some gain on their own account than on account of what they think is really needed by the unfortunate wards of the State.

Mr. Marshall — Mr. Chairman, I offer the following amendment.

The Secretary — By Mr. Marshall. After the word " incorporated ", line 5, page 1, insert, " under either public or private control and however supported and ".

Mr. Marshall — Mr. Chairman, this amendment is in the language of the eminent Chairman of the Committee on Charities, is to be found in his proposed amendment print No. 331, and the stone which the builders have rejected I desire to erect into a corner stone, by inserting it in the fundamental law. Under the decision of the Court of Appeals in the case of the People in relation to the State Board of Charities against the New York Society for the Prevention of Cruelty to Children, reported in 161 N. Y., page 233, the purposes of the framers of the present section of the Constitution, with regard to the Board of Charities, was absolutely lost sight of. The court decided by a vote of four to three that: " The scheme of State supervision of charitable institutions under the Constitution and statutes was not intended to apply to every institution engaged in some good or commendable work for the relief of humanity from some of the various ills with which it is afflicted, but only to those corporations, public or private, maintained in whole or in part by the State, or some of its political divisions, through which charity, as such, is dispensed by public authority to those having a claim upon the generosity or bounty of the State." As one who had to do with the framing of the present provision, I can state that it was the intention and purpose of those who had to do with it that every charitable institution in the State was to come under the supervision of the State Board of Charities, and that the power of visitation and inspection which was under this decision limited to those who were recipients of public moneys for the purpose of carrying out public charity, was not the intention of the framers of the Constitution. Now

there are, in this State, hundreds of charitable organizations under private management and private control, all of whom are exempted by the State from taxation, all of whom therefore are the beneficiaries of the State in connection with their charitable work, who, nevertheless, as a result of this decision, are free from visitation or inspection. We know, those who have given study to the subject of charities, that there have been many abuses in connection with these various private charitable organizations. We know that there has been much cruelty and much neglect of the charges of these organizations from time to time.

Mr. T. F. Smith — Don't you know, Mr. Marshall, that all those institutions, and now all the private ones, are subject to visitation by the Supreme Court?

Mr. Marshall — Oh, yes; I have known that for many years.

Mr. T. F. Smith — Hasn't the court time and time again exercised it?

Mr. Marshall — No, it has not time and time again. The court on occasion, and as the result of the awkward and clumsy proceeding which is most difficult to initiate, inspected — visited certain organizations, but it means a legal proceeding. It means much loss of time, considerable expense, and generally results in litigation, and it is an unsatisfactory method, whereas the method provided by the Constitution is simply one of administrative supervision by a board organized for that purpose. The Supreme Court is obliged to select a visitor, and that visitor is not apt to have the ability, or the qualifications or the experience which the State Board of Charities has, to deal with these matters. But why leave matters of this sort to judicial intervention? It should not which require court action. Courts interfere most reluctantly. The skilled inspectors and visitors of the State Board of Charities are, however, qualified to perform these duties and to perform them satisfactorily. Why should, then, any private charitable organizations be free from that inspection? To my mind it would be a most extraordinary thing for private corporations, which are the creatures of the State, to become superior to the State, to flout the State, to declare to it that it shall not investigate them and shall not perform acts of visitation. The New York State Association of Charities, of which Mr. Joseph H. Choate, the President of the Convention of 1894, is the President, most strongly favors the inspection and visitation of all charitable institutions. I was about to call attention to the fact that some of these private institutions which are not subject to supervision have not been slow to practice cruelty and to neglect their charges. I call attention to a famous case, that of Cowley against the People, 83 New York, page 464, where the manager of the Shepherd's Fold was indicted

and sent to prison for gross neglect of children who were in charge of this institution. Those who have watched the charities of this State know that many other abuses have arisen in the management of private charities. Dishonesty in the management of many of them has been disclosed. Cliques have been formed in some of them which have had for their object the perpetuation in office of salaried officials. Time and again scandals have arisen in these organizations which certainly would not have occurred it there had existed proper inspection and supervision. The funds of many so-called charitable institutions have been embezzled or misapplied. The contributors to them are without protection or security, and are apt to become the victims of deception. I have had personal experience with the operations of this board. I was a member of the Board of Managers of an organization whose members fondly believed that it had reached the acme of perfection. The State Board of Charities inspected and visited it and dicovered facts which a very careful Board of Managers and a competent Superintendent had been unable to discover in respect to its management, with the result that to-day that institution is a far better one, is better managed, and gives better satisfaction and does better work than it ever did before. The difficulty in which we find ourselves is due to the fact that two gentlemen of the millionaire class, who have recently fallen under the displeasure of a distinguished publicist who desires to curtail the amount that they may leave to their children, became embroiled with respect to this very subject of visitation; and because of that quarrel the charities of this State have to a marked degree suffered because of the inability of the State to inspect and visit them. The Constitutional Convention now has the power, if it desires to exercise it, to adopt the policy which not merely requires that State institutions, county institutions and city institutions, or those which receive grants of public money, shall be subject to visitation, but that there shall be one general, universal rule which will require State supervision and State visitation of every kind of charitable institution and especially of those charities which are exempt from taxation.

The Chairman — The Chair regrets to state that the gentleman's time has expired.

Mr. Tanner — I wish to speak for just a moment on the amendment offered by Mr. Hinman. That amendment is found in Section 13 of General Order No. 49, and is the section relating to the subject of charities and corrections, which, after conference with other committees having those matters more immediately in charge, the Committee on Governor and Other State Officers have offered for the consideration of this Convention. I shall object very

strenuously to the amendment offered by Mr. Hinman, for the reason that a slight modification will have to be made in that, in any event, to meet the wishes of the Committee on Governor and Other State Officers, and I will point out just how. If you will turn to the file, you will find that it reads: "The Department of Charities and Corrections shall be administered by the Secretary of Charities and Corrections." That phraseology was used at the head of each one of these departments. In executive session, and when the first drafts were submitted before this Committee, it was agreed that the Secretary of Charities and Corrections should have supervisory power, and when, as a matter of drafting the whole document for this Convention, the words "The Department of Charities and Corrections shall be administered by" to conform with the heading of each other section,— it did not conform to the wishes of the Committee on Governor and Other State Officers with reference to this subject of charities and corrections. Therefore, an amendment, in any event, will be made by this Committee when the matter of the general framework of government into which this subject fits comes before this Convention.

The Chairman — The Chair desires to state that there are but five minutes left, about four and a half minutes left, for debate.

Mr. Hinman — Mr. Chairman, I want to call the attention of the gentleman to the fact that in my proposed amendment I have taken that into consideration and made the modification which provides that the head of the department shall be secretary of charities and correction.

Mr. Tanner — Mr. Chairman, we have put in here on line 7 the word "also" which limits the power of the Legislature to modify or change any of the constitutional powers granted in Section 13 and of the statutory power, which I think, of course, is the only proper thing to do. We should not grant a constitutional power and then give the opportunity to the Legislature to take it away. Now, Mr. Chairman, just one word in reference to the merits of this article proposed by Mr. Steinbrink in this section. The Committee on Governor and Other State Officers, I think, probably would not have introduced this if it had been left to them. In the first place, they have not tried to interfere with any other committee, and when the committee on charities by an unanimous report had sought to embody in the Constitution a continuation of a system which it seems to be the universal testimony has worked well, our Committee did not feel that it should oppose that, and I do not feel so, and I wish to state further that I do not believe that Mr. Steinbrink's amendment interferes with the general supervisory scheme which is proposed in Section 13 of the report of the Committee on Governor and Other State Officers. There is just

one thing I would like to call Mr. Steinbrink's attention to. You give the fiscal control, "except in so far as such management may now or hereafter be delegated by the legislature to local boards of managers"; now in the amendment proposed by the Committee on Governor and Other State Officers we have laid before the Convention the proposition that the department of public works should erect public buildings, and we would like to have it very distinctly understood that that part of Mr. Steinbrink's amendment is not to interfere with the construction of public buildings by the department of public works.

Mr. Steinbrink — Mr. Chairman, may I say to Mr. Tanner, that my understanding is that it will not interfere with such a plan or such a scheme. You will observe, Mr. Tanner, that all that the Legislature may delegate is management. They may not delegate fiscal control; it will always remain subordinate to general governmental control.

Mr. Tanner — I simply want to take precaution, Mr. Chairman, in time, so that when this article of ours is introduced and taken up, it will not collide with the previous action of the Convention. I think it is only proper to do that. Now so far as voting for our amendment as a substitute, and Mr. Steinbrink's, that is the real position in which we find ourselves. As I understand the report and recommendation of the Committee on Charities, if Mr. Steinbrink's amendment goes through, it contains nothing which will affect our article, and we are in favor of it, of course, subject to the change in minor matters, but the general scheme of the Steinbrink amendment fits in with the purposes of Section 13.

The Chairman — The Chair desires to state that the hour for debate has expired, and under the rule we will proceed to vote.

Mr. Dykman — Mr. Chairman, is there no opportunity to answer Mr. Marshall's argument in favor of his amendment?

The Chairman — The Committee can rise and ask leave to extend the time. The Chair understands that that is the rule of the Convention.

Mr. Steinbrink — Mr. Chairman, may I make just this brief observation. One hour —

The Chairman — The Chair cannot permit further debate.

Mr. Steinbrink — This is not debate. This is a statement which has reference to this rule. The hour was allotted for debate on this proposal as it came from the Charities Committee. The amendment offered by Mr. Marshall does not affect that proposal. It affects another section of it, another subject that is covered by it.

Mr. Barnes — Mr. Chairman, a point of order.

The Chairman — The gentleman from Albany will state his point of order.

Mr. Barnes — The time has expired.

The Chairman — The point of order is made that the time has expired.

Mr. Stowell — It is an outrage that this Convention and the members of this Convention cannot discuss this question at least a reasonable length of time. Now, I move that this Committee rise, report progress and ask leave to sit again and a further extension of time to discuss this question for the period of one hour.

Mr. Wickersham — Mr. Chairman, I hope the motion will not prevail. If the gentlemen had been here last week, Friday, and the week before, Friday and Saturday, and Monday morning, there would have been more time for their —

Mr. Stowell — I was here, sir.

Mr. Wickersham — I know you were here, but many others were not. Fair warning was given. The attention of the delegates was invited to the need of their being here every day of the time fixed under the rules, and it was pointed out if they were not here it would be necessary to limit the time for debate in order that the work of this Convention might be completed in time.

Mr. Stowell — It is better to do one or two things well than it is to do a half dozen things badly. I think it is an outrage to so limit the time, and I insist upon my motion being put.

The Chairman — The question is upon the motion of Judge Stowell, that the Committee rise, report progress, ask leave to sit again, and ask for an extension of time. All in favor of the motion will say Aye, opposed No. The Chair is in doubt. All those in favor will rise. All those opposed will rise. The clerk will announce the result.

The Secretary — Ayes, 48; Noes, 59.

The Chairman — The motion is lost. The question now is upon the amendment of Mr. —

Mr. Shipman — Mr. Chairman, I rise to a point of order.

The Chairman — The gentleman will state his point of order.

Mr. Shipman — In the observation of the rule, I raise the point of order that the rule we adopted applies to the amendment itself as presented here before the Committee of the Whole. It does not apply to the time to be consumed in discussing the amendments which are offered to that amendment. That must be outside the rule.

The Chairman — The Chair calls the attention of the Commitee to page 534 of the journal and to the rule which says that the following matters are to be made special orders, and then it limits the time to one hour.

The question is upon the amendment of the gentleman from Albany, Mr. Hinman.

Mr. Wickersham — Will the amendment be read?

The Secretary — By Mr. Hinman: Substitute for Mr. Steinbrink's printed No. 783 the following: The head of the department of charities and corrections shall be the secretary of charities and correction. The State Board of Charities, the State Commission in Lunacy to be hereafter known as State Hospital Commission, and the State Commission of Prisons are continued with all the powers vested in them by the Constitution on the first day of September, nineteen hundred and fifteen, and with such powers as have heretofore been vested in them by the Legislature, subject to the powers of the Legislature to increase, modify, or diminish the same by provisions not inconsistent with this section. The secretary of charities and corrections shall have the power of inspection and supervision of all State charitable institutions, State hospitals for the insane, State prisons, and other State correctional institutions. He shall take care that all laws relating to such institutions are faithfully executed, and he shall perform such other duties with relation to the charities and corrections of the State, or any civil division thereof, as may be imposed upon him by law. All the existing boards of managers of institutions referred to in this section are continued, at the will of the Legislature.

Mr. Hinman — Mr. Chairman, I call for a rising vote.

The Chairman — The vote is on the amendment of the gentleman from Albany, Mr. Hinman. All in favor of the amendment will rise and remain standing until counted. Be seated. Those opposed will rise. The amendment is lost. The question now is upon the amendment of the gentleman from New York, Mr. Marshall. The Clerk will read the amendment.

The Secretary — By Mr. Marshall: After the word "incorporated" in line 5, page 1, insert "under either public or private control and however supported and."

The Chairman — Those in favor of the amendment will say Aye. Contrary minded, No. The motion is lost. The question now is upon the adoption of the Proposed Amendment, General Order No. 49. Those in favor of recommending the adoption of the amendment will say Aye, opposed No. It is carried.

Mr. Wickersham — Mr. Chairman, I move that the Committee do now rise and report the adoption of the article.

The Chairman — The question is on the motion of Mr. Wickersham that the Committee do now rise and report on the adoption of the amendment. Those in favor will say Aye, contrary No. The motion is carried. (The President resumes the Chair.)

The President — The Convention will come to order.

Mr. Lindsay — The Committee of the Whole of the Convention has had under consideration General Order No. 49 and directs me as its chairman to report the same with the recommendation that it be adopted.

The President — The question is on agreeing with the report of the Committee. All in favor of agreeing will say Aye, contrary No. The Ayes have it and the report is agreed to. The Proposed Amendment to the Constitution is advanced to third reading.

Mr. Wickersham — Mr. President, I ask unanimous consent to change the order fixed in special order so as to take up next General Order No. 50, cities, home rule, followed by No. 52, serial bonds. I make this at the request of the chairmen of those committees.

The President — Is there objection? The Chair hears none and it is so ordered. The Convention will return to Committee of the Whole for consideration of special order, General Order No. 50, commonly known as the home rule amendment. Mr. Lindsay will resume the chair.

The Chairman — The House will come to order in Committee of the Whole on General Order No. 50.

Mr. Low — Before explaining the changes which have been made in this bill since its recommittal, I wish to offer an amendment on page 7, which I think will explain itself. I wish to move that on page 3 the word "or" be bracketed; page 7, line 3, the word "or" be bracketed and the word "who" followed by a comma be inserted. On line 4, after the word "terminated" the words "shall immediately transmit the same" be inserted and that the bracket after the word "governor" be omitted, so that the sentence will read, beginning on line 2, "After the mayor shall return such bill to the clerk of the House from which it was sent, who, if the session of the Legislature at which such bill was passed has terminated, shall immediately transmit the same to the Governor with the mayor's certificate." The amendment was made to meet the wishes of the clerks of the Senate and Assembly that bills sent to the cities at the end of the session should be returned to them for record; but as made it seemed to leave the bills in their hands and the purpose of these amendments is simply to make it the duty of the clerks when they receive such bills to transmit them to the Governor so that the Governor may act on them.

The Chairman — Will the gentleman send the Proposed Amendment to the desk when he is through?

Mr. Low — I will send it, Mr. Chairman. Now, Mr. Chairman, if I may ask the attention of the Convention, I think I can

explain very briefly the amendments which have been made in this measure, and what it is proposed to effect. I shall spend no time in discussing Sections 1 and 2, because when we come to consider those as sections, any minor amendments that may be necessary can be considered. The Convention will notice, first of all, that what was Section 3, what was Section 4 of our bill, has now become Section 3. That change in the order seemed to be necessary in order to produce a logical bill. The very fact that I was obliged to commence with the discussion of Article IV and then go back to Article III in order to show how Article III affected Article IV seems to make it clear, without further illustration, why that change in the order was made. Now the grant to the cities contained in Section 3 has been changed in the first three lines. "Every city shall have exclusive power to manage, regulate and control its property, affairs and municipal government." It formerly read, the Convention will recall, "its property, business and local affairs." We have eliminated the word "business" and have substituted therefor the words "municipal government". The grant originally read "subject to the provisions of this Constitution" subject to this Constitution "and subject to the general laws of the State applying to all of the inhabitants" — and the like. We have adopted Mr. Marshall's suggestion in lines 20 and 21, so that the grant, the exclusive grant to cities, is made subject to the provisions of this Constitution, and subject, further, to the general laws of the State. Then we have modified the former limiting clauses and have replaced them by this: "Subject further to the provisions of the general laws of the State, to laws applying to all of the cities of the State without classification or distinction and all laws applying to a county not wholly included within a city, establishing or affecting the relation between such a county and the city therein."

In other words, Mr. Chairman, the exclusive grant to the cities is subject to the provisions of the Constitution, subject to the provisions of the general laws of the State, which apply without classification or distinction to all the cities of the State, and to laws applying to a county not wholly included within a city, establishing or affecting the relations of such a county or city therein. The last proviso meets, I think, the question raised by Mr. Barrett, the delegate from Westchester. I think that no change has been made in subdivision *a*, which appears at the top of page 3; but subdivision *b* has been importantly amended and I ask the particular attention of the House to this amendment. Subdivision *b* now reads "The power is hereinafter provided to revise or enact amendments to its charter in relation to its property, affairs or municipal government, and to enact amendments to any local or special law with relation thereto." That is a change of expression but no

change of significance. The new matter follows: "A city may enact amendments to its charter or any existing special or local law in relation to any matter of State concern; the management, regulation and control of which shall have been delegated to the city by law, until and unless the Legislature, pursuant to the provisions of section 4 of this article, shall enact a law inconsistent with such amendments. The term charter is declared for the purposes of this article to include any general city law enacted for the cities of one class, in so far as it applies to such cities." Now, Mr. Chairman, the part of paragraph *b* beginning with the word "city" on line 15, and terminating with the word "amendments" on line 20, is an exceedingly vital part of this amendment as it now reads. Every member of the committee will appreciate that the great difficulty in connection with any home rule question whatever, is to determine what are the powers of the city and what are the powers of the State in that twilight zone where both are concerned. This amendment is based upon the relations between Congress and the states in connection with interstate commerce. Every one appreciates that in controlling and regulating interstate commerce Congress is paramount. Nevertheless the states are free to act unless Congress by its enactments sets their action aside. Now that is the theory of this amendment, and of course under the exclusive grant to the cities to look after their own affairs, the cities may amend their charters as to such matters without any hesitation, but when the broader line is reached, without this amendment it might have been the necessary effect of caution to submit every proposed amendment to the Legislature and secure a special law. With this amendment, the city is free, you see, to amend its charter or any existing special or local law in relation to any matter of State concern, the management, regulation and control of which shall have been delegated to the city by law; and that action will stand and be lawful until or unless the Legislature sets it aside by acting in this field of State concern in the way provided in the following section of this article. I call the particular attention of the members of the Committee to two phrases. We say that the State may enact these amendments as to any matter of State concern, the management, regulation and control of which shall be delegated to the city by law. In other words, the city cannot go outside of its grant of power to deal with such matters and take up new activities or new powers. It can pass these amendments as to the things which have already been committed to it; and by that phrase "shall have been delegated by law," we mean whether by its charter, by any special or general law, from the date of the city's action; whatever power has been granted to the city as to such matters, whatever matter of State

concern has been put under the control of the city as to such matters at the time of its action, whether by its charter, by general law, by special law, that comes within the competency of the city. The last four lines of that section, lines 20 to 23, meet the inquiry — are intended to meet the inquiry submitted by Mr. R. B. Smith as to what is the charter of one of the second class cities who are governed by a general city law.

The Chairman — The Chair regrets to call attention to the fact that the gentleman's time has expired.

Mr. Low — I would ask unanimous consent to complete my explanation, Mr. Chairman. It would take only a very few minutes more.

The Chairman — Is there any objection? If not, the gentleman may proceed. But, before proceeding, the Chair would like to call the attention of the Committee to the fact that members say they cannot hear on account of the confusion in the body. The Chair therefore desires to say that, as the debate is limited to ten minutes for each person, and we have only two hours on this matter, he hopes the members will not move about any more than is necessary or create any confusion, and especially that all matters not connected with the Convention will cease in the room during this debate.

Mr. Low — Mr. Chairman, beginning at the end of line 26, on page 3, there is a proviso that is new in connection with the city's action in enacting such amendments: "provided, however, that in a city in which any of the members of the board of estimate and apportionment are not elected or in which no such body exists no such amendment shall be enacted without the assent of two-thirds of all members elected to such legislative body". That has reference to the cities of the second class which have boards of estimate and apportionment, two of whose members, however, are appointed by the Mayor. It also has reference to cities having the commission form of government, with five members in the commission, so that such a city must have a quorum of four out of the five to take such action. I think there is no other change of significance in that paragraph except that we have provided that such amendments may be submitted to the Legislature in 1916, on or before the 15th day of February, instead of during the first week of the session. That amendment was made to meet criticism that came from some of the cities that without it the year 1916 was a year in which no amendment could be obtained. Beginning with page 20 — at least, line 20 of page 4, the Committee has inserted the suggestion that the election to decide whether a city wants a new charter, and if it does, to elect the Commission for its revision at the same time. The election on that subject will take place in

what I may call the first city year. That is to say, 1917, two years from now. And, as the matter involves some detail, the clause ends with this sentence: "The legislature shall by general law provide for carrying into effect the provisions of this paragraph." There is no further change, I think, except in the matter of arrangement, until we reach page 6, beginning with line 7 and going through line 22. I believe that those four clauses are all new; at any rate, as they now read: "The legislature may delegate to the cities for exercise within their respective local jurisdictions such of its powers of legislation as to matters of state concern, as it may from time to time deem expedient." I think that is self-explanatory. "The legislature shall pass no law relating to the property, affairs, or municipal government of any city excepting such as is applicable to all cities of the state without classification or distinction." The intent of that paragraph is to forbid the legislature from passing such laws within the field of the exclusive grant to cities. Within that field the Legislature can legislate only by general law affecting all cities without classification or distinction. The third paragraph reads: "The provisions of this article shall not be deemed to restrict the powers of the legislature to pass laws regulating matters of state concern as distinguished from matters relating to the property, affairs, or municipal government of cities." In other words, while the Legislature cannot enter the field of the exclusive grant by a special law outside of that field it can legislate by a special law. Then the next paragraph defines what is a special city law, which shall be adopted. It says: "Laws affecting the government of cities in matter of state concern and applying to less than all the cities of the state without classification or distinction are defined for the purposes of this article as special city laws." Those special laws are to be passed as now, with the suspensive veto of the locality. That, Mr. Chairman, completes my explanation of the amendments, and I now move that we take up the consideration of this bill, section by section.

Mr. J. S. Phillips — Under this provision it seeks to give the city power to make its own amendments. Under that power, would it have the right, for instance, to change the boundary lines of an aldermanic district or would that be a part of the framework of the government?

Mr. Low — It would seem to me that that is clearly a part of the framework of the government, Mr. Chairman; and certainly, so far as counties are affected by any such change in the wards, it is covered by the special provision of the grant which makes the grant of exclusive power to the city subject to "laws applying to a county not wholly included within a city establishing or affecting the relation between such a county and a city therein."

Mr. Marshall — I would like to ask the gentleman a question. In order that there may be no doubt in the future as to the proper interpretation of the cities article, and not because there is any present doubt in my own mind, I have asked the distinguished chairman of the Cities Committee to indicate whether my understanding of two phrases used in the amended article Print No. 823 is accurate.

The first is the expression "frame-work of government" which occurs on line 6 of page 4. The second is that contained in the words "matters of State concern"—

Mr. D. Nicoll — I raise a point of order.

The Chairman — The gentleman will state his point of order.

Mr. D. Nicoll — The chairman of the committee has moved to take up this article section by section, as I understand it, and he has now moved to take up Section 1. If you cover the whole subject with questions and amendments, we shall not get anywhere. The way to do is to take it up and see whether or not we have any objections or difficulties about Section 1.

Mr. Marshall — I do not propose to make any amendment. I think this is entirely satisfactory to the chairman.

Mr. Low — I have no objection to answering Mr. Marshall's questions.

Mr. D. Nicoll — I have a whole budget of questions, but I thought I would take them up in order.

The Chairman — The Chair thinks that the chairman of the committee is making a general statement of the changes made and he yields to the gentleman for a question. The gentleman may put his question.

Mr. Marshall — The first is the expression "frame-work of government" which occurs in line 6 of page 4. The second is that contained in "matters of state concern" which appears three times, namely, in lines 9, 16 and 17, 19 and 20 of page 6. By the words "frame-work of government" I understand the committee to refer broadly to the skeleton of city government, around which are arranged its muscles, nerves and tissues, and which, if changed, would constitute an entirely different organism. To illustrate: speaking of the city of New York, the frame-work of its government would consist of an executive department, with a mayor at its head, of a legislative department consisting of a board of aldermen, of a department partly administrative and partly legislative, comprising the board of estimate and apportionment, of a borough system inter-related with the municipal government in its entirety. By the phrase, "matters of state concern", I do not understand to be those which are comprehended in the words "property, affairs or municipal government", although speaking

broadly these latter subjects are, as is everything within the boundaries of the Commonwealth, matters of state concern. I would rather say that the term embraces what are known as state functions in the exercise of which the municipality, wherever charged with the duty of taking action, serves as the agent of the State, as, for example, when it acts in relation to education, or the preservation of the public health, the maintenance of public peace and order, or when it exercises powers in respect to the civil service, to elections, to the regulation of public utilities, the furtherance of public justice, the administration of public charity and the like. This enumeration is of course not intended to be exclusive. If I am in error as to my understanding of the sense in which these two phrases are employed I ask now to be corrected. I also assume from the fact that the word "business," to which I objected when the measure was first considered in the Committee of the Whole, has been eliminated, that it is because of acquiescence by the Cities Committee in the views which I then expressed, and that nothing contained in the amended article which we are now considering is intended to confer upon any city the power to engage in any business enterprise or in any undertaking which has not heretofore been generally embarked upon by the municipalities of this State.

Mr. Low — Mr. Chairman, I have no authority from the Cities Committee to answer for the Committee, but I am entirely willing to express my own understanding in connection with these questions, and upon my own responsibility. I concur in what Mr. Marshall says as to the frame-work of government, so far as it goes, but I think there may be changes in an administrative board or department which change the frame-work of government, but which do not change it so much as to constitute, in the language of Mr. Marshall's question, an entirely different organism. I explained at great length when we introduced the first bill what the Committee itself understood by the phrase, and I think there is no occasion to add anything to what I then said. In response to Mr. Marshall's question, I think he does not go quite far enough.

As to matters of State concern to which he alludes, I concur in his view. As to the omission of the word "business", I can say nothing in regard to the motives of the Committee. They expressed none, so far as I recall. They omitted the word "business" from the grant of exclusive power, and substituted the words "municipal government". I can say for myself that nothing contained in the amended article which we are now considering is intended to confer upon any city the power to engage in any business enterprise or any undertaking which has not heretofore been generally embarked upon by the municipalities of this

State. I renew my motion, Mr. Chairman, unless there are other questions to be asked.

Mr. A. E. Smith — Did I understand the chairman of the Cities Committee to tell Mr. Phillips that the redistricting of the aldermanic districts, for instance, in the city of New York would be a matter for the Legislature?

Mr. Low — No, Mr. Chairman, I think that the city of New York could redistrict them, but I think that it might be a matter affecting the frame-work of the government of the city and therefore have to be submitted under that head for nullification.

Mr. A. E. Smith — Submitted to the Legislature in the first week of the session?

Mr. Low — Yes, subject to nullification.

Mr. A. E. Smith — I would like to suggest to the Chairman — I will endeavor to do it myself if I can find the language and the place — I would like that be something that is specifically exempted from submission to the Legislature, because that is genuine, pure politics and you never can get anywhere with it in the Legislature.

Mr. Low — Mr. Chairman, I should say that, so far as the city of New York is concerned, I do not know whether a change in wards would have anything more than a local significance; but, as to other cities which are included in counties, a change in the wards might vitally affect their relation in the boards of supervisors to the control of the county and I think that would have to go before the Legislature.

Mr. A. E. Smith — Well, if the action of the board of aldermen is dependent upon the action of the Legislature in so simple a home rule matter as the laying out of aldermanic districts, I think that constitutes a defect which should be cured. It is not the business of the city so much, nor is it the affair of the State so much. It is the political complexion of the government. There is just as much politics in an aldermanic reapportionment as there is in a State reapportionment, and you all know how much politics there is in that, because you have for about four and a half months very scientifically and very carefully "ducked" it.

Mr. Low — Mr. Chairman, I think it would be better if we took up the bill section by section and considered definite proposals.

Mr. A. E. Smith — Will the chairman of the Cities Committee indicate to me just where that should go if it went into the bill?

Mr. Low — It seems to me that the speaker must find that out for himself, Mr. Chairman.

Mr. A. E. Smith — I would like to do it to-day. That is the point.

Mr. Low — Of course, Mr. Chairman, the speaker appreciates that the Legislature can take no initiative in the matter. The

whole initiative would lie with the State and it would be submitted subject only to the opportunity of annulment.

Mr. A. E. Smith — Well, in answer to that, I just want to say this: That an honest and a fair and a square apportionment of the city, taking Manhattan Island and slicing it the way you would slice a loaf of bread, from the Battery to the Harlem, would be a fair and an honest apportionment, but it would never pass the Assembly or the Senate.

Mr. Low — Mr. Chairman, I move the adoption of section 1 of this bill.

Mr. E. N. Smith — I offer an amendment to section 1.

The Chairman — Mr. Smith offers an amendment, after which Mr. Quigg may have the floor. The clerk will read the amendment.

The Secretary — By Mr. E. N. Smith. Page 1, line 4, strike out the comma. Page 2, line 3, strike out the words "and to prescribe", and in line 4 strike out the words "their initial form of government".

Mr. Low — Mr. Chairman, I am willing to accept that amendment. It simply effects a verbal change and does not affect the substance. But I am not authorized by the Committee to accept. To me, personally, it seems not to change the sense in any respect. Without objection by the Committee, I should accept it. If the Committee objects, or any member of it, I am unable to accept it.

The Chairman — If the chairman of the Cities Committee has closed his address, the Chair will recognize Mr. Quigg.

Mr. Quigg — Mr. Chairman, so much has been said upon the merits of this bill that I do not want to discuss them. I want to say a word about the expediency of the bill. Mr. Nicoll pointed out a day or two ago, and many other members have mentioned it, the fact that we were called together here by a scant majority. In respect of each one of these great propositions, I think it is our duty to remember that a million voters might have expressed their opinions at the polls in April a year ago as to whether this convention should or should not be assembled; and that as many as seven hundred thousand of them were so indifferent to the subject that they did not even take the trouble to go to the polls to vote. Then, of the remaining three hundred thousand that did vote, fifteen hundred decided that the convention should be called, as I remember the figures.

Mr. D. Nicoll — There were 1,587,000 votes cast in the presidential election of 1912.

Mr. Quigg — That is many more than I said.

Mr. D. Nicoll — Three hundred and three thousand voted on the question as to whether there should be a Constitutional Convention; 153,000 voted "yes", and 151,700 voted "no".

Mr. Quigg — You are substantially stating what I said.

Mr. Marshall — Instead of there being a majority of 1,500, however, after corrections had been made by reason of fraudulent votes which were cast, and which were of course thrown out, the net majority was reduced to 385.

Mr. Wickersham — Was there not a very much larger vote when it came to the election of delegates to the Convention?

Mr. Quigg — They had to vote then, Mr. Wickersham.

Mr. Wickersham — Pardon me, did not then nearly 1,100,000 electors vote for delegates to the Convention?

Mr. Quigg — I consider that suggestion utterly irrelevant.

Mr. Wickersham — I do not.

Mr. Quigg — The question I am raising is, by what majority were we summoned. That is to say — wait until I get through, please — that is to say, how satisfied were the people of this State with this Constitution as it did exist? Now, that is the question. Of course, a majority having called the Convention, the people had to vote then when we were all nominated; and, of course, going to the polls for other purposes, they voted in respect of this Convention. Does that answer you?

Mr. Wickersham — No, Mr. Chairman, it does not answer me. I think the very discriminating vote cast at that election by 1,100,000 people ratified amply the vote of the smaller number in calling the Convention.

Mr. Quigg — It was a discriminating vote in favor of Governor Whitman, and you came along with that.

Mr. Wickersham — Mr. Chairman, I deny the soft impeachment.

Mr. Sanders — Point of order. This discussion is not germane to the subject now before the House.

Mr. Quigg — I did not hear the point of order.

The Chairman — The point of order is that the subject is not germane.

Mr. Quigg — Oh, very germane, if you will just give me a second.

The Chairman — The Chair would like to state that these interruptions take from the time of the member, and, if he permits them, the time will have to be deducted from his time.

Mr. Quigg — I will permit no other.

Mr. Sanders — How did the Chair rule on the question?

The Chairman — The Chair cannot tell until the gentleman proceeds.

Mr. Quigg — Now, Mr. Chairman, the figures that have been shown here, as stated by Mr. Marshall, show that the ship on which we have embarked here was a little bit water-logged from

the start and we need to put under it, as the sailors do in the sea when they are supporting a water-logged ship that is well worth saving, some pontoon planks that will hold it up and carry it to port. We have had two of them and we have an opportunity now to have a third. The first was Mr. Shipman's proposition for the budget. That, I believe, will be approved by the people, as it was approved here. The second was Mr. Wickersham's scheme of procedure reform — the biggest thing in the judiciary article. The third thing on which we are sure to carry this ship to port is the home rule proposition presented by Mr. Low. Now, this proposition is being opposed by people who want to get too far ahead of the procession. No one threatens to vote against this Constitution because of this home rule provision. They only want us to do something more than we can do. What has been the fate of people who tried to get ahead of the procession? They have been ruined, and their cause, too. We ought to pass this bill just about as it is because no more can be done. It makes no difference whether the individual that gets ahead of the procession is punished by a dose of hemlock poison or is punished by practical exclusion from public consideration, as is the fate nowadays and was the fate recently. The thing for statesmen to do is what Mr. Low has done: Set the pace and fix the stride the way that the people can keep up with it, and that is what has been done in this home rule provision and that is the reason why it ought to pass.

Mr. Franchot — I offer the following amendment to Section 1.

The Secretary — By Mr. Franchot: Page 2, strike out lines 6 to 9 and insert in lieu thereof: "The Legislature shall fix by law the subjects of taxation by cities as a matter of State concern."

Mr. Low — The lines which that amendment applies to relate to the regulation of taxation and assessment by the Legislature. I am not sure that the significance of it is as clear as it ought to be but by the words "provided in this Constitution" the Committee had in mind Section 10 of Article VIII of the Constitution which limits in terms to two per cent. on the assessed value the taxation that may be incurred by any city having over one hundred thousand inhabitants. It seemed, therefore, to the Committee, that, so far as those cities were concerned, no further action by the Legislature was necessary. Because that provision was said not to fit the needs of the smaller cities, the Committee inserted the words "provided in this Constitution." Again, without the opportunity to confer with the Committee, I am rather inclined to submit an amendment that we should leave out the words "provided in this Constitution" and insert the words "as to cities having more than one hundred thousand population". The sentence would then read: "Except as to cities having more than one hundred thousand population it shall be the duty of the Legis-

lature to restrict the powers of taxation and assessment so as to prevent abuses in taxation and assessments by any city or incorporated village." In other words, for cities of one hundred thousand and over, the Constitution itself does that; for cities having less than one hundred thousand population, we want to leave the duty with the Legislature. I have no authority to accept Mr. Franchot's amendment.

Mr. Franchot — I offered the amendment chiefly to call attention to a confusion and doubt which is implied in the amendment which the language proposes to strike out. It is stated in four lines that " it shall be the duty of the Legislature to restrict the powers of taxation and assessments in cities." Now, it occurs to me, that it is quite likely that the use of the word " restrict " will be held to confer upon the Legislature plenary power with respect to taxation and assessment in cities. As this is a home rule measure, I do not suppose that the Convention or the Committee on Cities contemplate that there should be carved out of the general grant in Section 3, lines 18 to 20, that large sphere of action which comes under the head of the administration of tax laws in a city. Now the use of the word " restrict " can quite well be construed to mean that it was the intention of the Committee on Cities — and, if this is adopted, of the Convention,— that matters of taxation shall be reserved out of the grant as a matter of State concern as contradistinguished from the control of the property, affairs, and municipal government of cities. I quite conceive that perhaps no such intent was in the minds of the Committee, but I call the attention of the Convention to the obscurity of this language.

Mr. Low — Mr. Chairman, I am unable to accept Mr. Franchot's amendment and I would call for a vote. I think it would be a useless proposition to discuss that further.

Mr. D. Nicoll — Mr. Chairman of the Cities Committee: Isn't the language of lines 6, 7 and 8 rather a curious form of expression? Now it reads: " Except as provided in this Constitution it shall be the duty of the Legislature to restrict the powers of taxation and assessment so as to prevent abuses in taxation and assessments by any city or incorporated village." In other words, it shall be duty of the Legislature to restrict the powers of taxation and assessment so as to prevent abuses in taxation and assessments by any city, except as provided in this Constitution. What is meant by that?

Mr. Low — Mr. Chairman, I explained a moment ago that the Constitution itself does that for cities of one hundred thousand and over.

Mr. D. Nicoll — I know it, but doesn't the language appear inapt? Don't you think the language is open to criticism?

Mr. Low — That is why I proposed to substitute for the words "provided by this Constitution" the words "to cities having more than one hundred thousand population," so it would read: "Except to cities having a population of over a hundred thousand, it shall be the duty of the Legislature", and so forth.

Mr. C. A. Webber — I have been unable to find in Section 10 of Article VIII, any reference to that, applying only to cities of over a hundred thousand inhabitants.

Mr. Low — Mr. Chairman, the last sentence in Section 10 of Article VIII is as follows: "The amount hereafter to be raised by tax for county or city purposes in any county containing a city of over one hundred thousand inhabitants, or any such city of this State, in addition to providing for the principal and interest of existing debt shall not in the aggregate exceed in any one year two per centum of the assessed valuation of the real and personal estate of such county or city, to be ascertained as prescribed in this section in respect to county or city debt." That is the present Constitution, and in our financial amendment which will come up later, these words remain unchanged.

Mr. Franchot — Mr. Chairman, am I to understand that the amendment is not accepted by Mr. Low for the reason that it is his opinion that the words used in lines 6 to 9 have no effect whatever upon the words "property, affairs and municipal government" contained in line 19?

Mr. Low — Mr. Chairman, I am trying to follow the language adopted by the Committee as closely as possible while making the sense clear by the suggestion which I make.

Mr. Franchot — In the absence of an answer to my question with respect to the significance of the words in lines 6 to 9 on page 2, with respect to narrowing or expanding the grant made to cities, I would suggest to this Committee of the Whole, that while the matter is relegated to doubt and confusion, by the use of this language a reasonable construction would be that full control over the subject of taxation is delegated to the cities, as well as control over the administration, the administrative features of enforcing the law with respect to certain taxable subjects, and that in that regard this grant would then conflict with the proposal of the Committee on Taxation. Either that construction will obtain or it will be held that the power to restrict the power of taxation gives to the Legislature plenary power to regulate all matters of taxation including the subjects thereof in cities, and it seems to me that there should be some definition made by this Convention, instead of leaving that matter open to such doubt and confusion.

Mr. Low — Mr. Chairman, that is the language which has been in the Constitution since 1846, and so far as I know the action of

the Legislature under this authority has been to specify and fix the limit of taxation in cities, and whatever construction has been given in the past, I take it, would be given to the clause in the future. I move that a vote be taken on the Proposed Amendment to Section 1.

The Chairman — The question is upon the amendment of Mr. Low, which has not been sent to the desk and which the Clerk is unable to read.

Mr. Low — Mr. Chairman, it is difficult for me to get a chance to sit down and write it out. It is brief and will the Clerk please take it down.

The Secretary — Page 2, line 6, eliminate the words " provided in this constitution " and insert the words " to cities having more than a hundred thousand population ". So that it will read: " Except as to cities having more than a hundred thousand population it shall be the duty " and so forth.

The Chairman — Is that all of the amendment?

Mr. Low — Yes.

The Chairman — The Clerk will read the amendment.

The Secretary — Page 2, line 6, strike out the words " provided in this constitution ", and insert the words " to cities having more than a hundred thousand population ".

The Chairman — The question occurs upon the adoption of the amendment offered by Mr. Low. All in favor of the amendment will say Aye, opposed No. The amendment is adopted. Are there any further remarks?

Mr. Low — There are two more amendments, one by Mr. E. N. Smith and one by Mr. Franchot.

The Chairman — The question now is upon the amendment offered by Mr. E. N. Smith. The Clerk will read the amendment.

The Secretary — Page 1, line 4, strike out the comma, and on page 2, line 3, strike out the words " and to prescribe " and in line 4, the words " their initial form of government ".

Mr. J. L. O'Brian — Mr. Chairman, I am not opposed to this amendment because I think it means as amended exactly what it meant before; in other words, that the clause stricken out is tautological and is not intended to change the meaning of the paragraph as it came from the Committee on Cities. That being my understanding I do not oppose the acceptance of this amendment.

Mr. Latson — Mr. Chairman, the amendment has the further effect of taking out the expression " form of government ", and that phrase, " the form of government " in this paragraph, contrasted with the expression " framework of government " in a later paragraph, may give rise to very close questions of construction. Again, if this amendment be adopted, this provision

of the Constitution will be left in substantially the same form as the existing Constitution. I think the sentence and the provision will be improved by the adoption of this amendment.

The Chairman — All those in favor of the amendment will say Aye, contrary No. The amendment is adopted.

Mr. Franchot — Mr. Chairman, on my amendment I will be satisfied to be recorded in the affirmative in accordance with the remarks I have made in support of it.

The Chairman — Does the gentleman withdraw his amendment?

Mr. Franchot — Yes, I will withdraw it.

The Chairman — The amendment offered by Mr. Franchot is withdrawn. The question now is upon the adoption of Section 1 as amended.

Mr. Marshall — I would suggest to the Chairman of the Committee on Cities — I don't want to make a motion — the desirability of suggesting to the Committee on Revision a change in the phraseology of the amendment which we have just adopted, in lines 6, 7, 8 and 9, of page 2. It now reads " Except as to cities having over a hundred thousand population, it shall be the duty of the legislature to restrict the powers of taxation and assessment so as to prevent abuses in taxation and assessment by any city or incorporated village." Now, I know what the Committee means, but the declaration is one which is very apt to give rise to, well, ribaldry, I think would be the proper word to use, and I think it would be well to change the expression.

Mr. Low — I would be very glad to take that up with the Committee on Revision; it is only a question of words.

The Chairman — The question is upon the adoption of section 1 as amended. All in favor of the amendment will say aye, opposed no. The section is adopted.

Mr. Low — Mr. Chairman, I now move the adoption of section 2. Through a misprint the words " and salaries " with bracket in should follow the word " wages " at the end of line 10. In other words the present Constitution reads that " the Legislature may regulate and fix the wages and salaries and the hours of work or labor." Inasmuch as we have given exclusive power to cities over their salaries in many respects, it is necessary we take out those words " and salaries " as they apply to cities, and that explains the change we have made, and the only change, so that the section will read, " The Legislature may regulate and fix the wages, and except as otherwise provided in this article, the salaries and it may also regulate and fix the hours of work or labor ", and so forth, and then the rest of the language remains as it is in the present Constitution.

The Chairman — Is the amendment in form to be sent to the desk?

Mr. Low — There is no amendment to be offered. I move the adoption of the section.

The Chairman — The question now is upon the adoption of section 2. All in favor of the adoption of section 2 will say aye, contrary, no. The section is adopted.

Mr. Low — Mr. Chairman, it seems to me that we would make better progress now if we take section 3, paragraph by paragraph. Therefore I move the adoption of the first paragraph, section 3, beginning on page 2, line 18, and running through to line 25.

The Chairman — Mr. Low moves that the consideration be that of the adoption of the first paragraph of section 3. If there is no objection it will be considered in that way.

Mr. Wagner — I offer the following amendment.

The Chairman — Mr. Wagner offers an amendment which the clerk will read.

The Secretary — Page 2, line 21, strike out the comma after "state" and strike out the words "of laws" after the word "state". Page 2, line 20, strike out the words "the provisions" and insert in place thereof the words "article 8, section 10".

Mr. Wagner — Mr. Chairman, the effect of the amendment is to have the section beginning on line 20, after the word "and" read as follows: "subject further to the provisions of the general laws of the state applying to all the cities of the state without classification or distinction." Otherwise, if we left that section as it is now, laws which are passed by a legislature applying to the inhabitants of a city of a million or more are general laws of the State, and so you would subject the local authorities — you would subject the powers which you propose to give to the local authorities to that general limitation. So that the Legislature would be empowered to pass a general law which shall apply to inhabitants of cities of a million or over, and in that way over-ride all of the power which you are now attempting to give to a locality. Now, the second amendment subjects the powers given to a municipality only to the limited provision of the Constitution, because the words in this general way might subject the local government to Article III, Section 1, which provides for all legislative power in the Senate and Assembly, and if we are subject to that general provision of law, why, then, the local authorities can have no legislative power except so much as may be delegated to them, and then there would be a question as to whether there would be any delegation of power so that the provision as it is now — I don't see that the city is getting any home rule at all, unless I am wrong in my construction of the meaning of this article.

Mr. Parsons — Does not the term "general laws" apply to laws affecting all the inhabitants of the State alike?

Mr. Wagner — No. The courts have over and over again held that a law applying to a city having a population of a million or more is a general law of the State, and so if you subject each municipality to the general laws of the State, why, the Legislature could pass an act which would over-ride and make ineffective any local powers that may be exercised by this general law.

Mr. Parsons — They hold, do they not, that it is a general law?

Mr. Wagner — No; they hold that it is a general law because in a city like Rochester or Buffalo, if it reached a million, they would come under the provisions of that law. Therefore, it is general.

Mr. C. Nicoll — I think the confusion in the mind of Mr. Parsons as to distinguishing between a general law and a general city law under the present Constitution is that there are general laws under the present Constitution, as Mr. Wagner truly says, but those laws do not affect property or government or affairs of cities. Laws that affect property, government, or affairs of cities are general city laws. There is that distinction here. The banking law, which certainly is a general law for example — there is a provision in the banking law providing that in cities of a certain population, the amount of reserve and the amount of capital which it is necessary for a person to have who engages in the banking business in that city, shall exceed the amount a person must have to engage in the banking business in smaller cities throughout the counties of the State. There is a very stringent provision affecting those engaging in the banking business in the city of New York in that regard, and there is a general provision in regard to the different boroughs, one relating to Manhattan where the amount of capital must be larger than it may be in Queens or in Richmond. But those laws do not affect the government, property, or affairs of cities. The same is true of the railroad law.

The Chairman — The Senator has the floor. Does he yield?

Mr. Wagner — I yielded, I supposed, to a question. I have no objection to the speech of the gentleman from New York, Mr. C. Nicoll. That may be Mr. Nicoll's understanding of what a general law is, but under the provisions of this proposal, the Legislature might pass an act affecting the property, the affairs and municipal government of a city, and say that the provisions of that law shall apply only to cities of a million inhabitants or over, and that law has been held to be a general law, and you say in your provision that the local authorities shall have the right to regulate their own property, affairs and municipal government, subject to these general laws; so that the Legislature can interfere, can pass a general law which would nullify all of the exercise of power by the local authorities in any one city, and return to the

discriminatory legislation of the past which it seems to me you are trying to cure. In my opinion, you will not cure it by this provision.

Mr. Parsons — Is not that covered by the provisions in lines 11 to 14 on page 6, prohibiting the Legislature from passing such a law as you describe?

Mr. J. L. O'Brian — Mr. Chairman, I think perhaps the purport of the bill in this particular is not correctly understood.

Mr. Wagner — Well, there we have two provisions: In one case we say the exclusive powers shall be within those general laws, and in the other this may be to some extent helped, but I think the ambiguity still remains.

Mr. J. L. O'Brian — Mr. Chairman, it was the intention of the Committee, I assume, by the language on page 6, which was overlooked, until Mr. Parsons called attention to it, overlooked by the gentleman who raised this question, and the Committee has put it in explicit language, as to the future, the Legislature can pass no law relating to the property, affairs or municipal government of any city, except such as is applicable to all the cities in the State without classification or distinction, and it further provides in the language following that, which I have just read, that the Legislature can pass no special law affecting the city in those particulars, except in a matter of State concern as distinguished from matters of municipal government, and this latter class of laws must be submitted to the suspensive veto of the city. Therefore, I think there is no occasion for the amendment suggested by the gentleman from New York. The bill is explicit on that point.

Mr. Marshall — I would like to ask the gentleman a question.

The Chairman — The gentleman from New York, Mr. Wagner, has the floor.

Mr. Wagner — I yield for the purpose of clearing up these points.

Mr. Marshall — In respect to your suggestion that there ought to be a change in line 20, Section 10, of Article VIII, after the word "Constitution" because you fear that otherwise the provisions of Article III, Section 1, would be controlling, namely, "the power of the Legislature shall be vested in the Senate and Assembly" I would call your attention to Section 27 of Article III of the Constitution, which has been in the Constitution ever since 1846, which provides that the Legislature shall by general laws confer upon the boards of supervisors of the several counties of the State such further powers of local legislation and administration as the Legislature may, from time to time, deem expedient. Now, that has been interpreted by the Court of Appeals in a number of instances as being a power which is not subject to

the interpretation which the gentleman seeks to give now to the terms of Article III, Section 1. In other words, having given that power of local administration, that power is the controlling power. So here the city, having by the Constitution raised the power to deal with matters of local affairs, having been given this grant of power, set forth in Section 3, there we have granted a particular power, a specific power, and that, of course, controls the general power of legislation which in contained in Article III, Section 1. That is the fundamental interpretation regarding the Constitution.

Mr. Wagner — I am satisfied, Mr. Chairman, if the gentleman, Mr. Marshall, is satisfied, that this does not limit the legislative power we are attempting in other provisions to give to the locality, I have nothing more to say.

Mr. Marshall — I have not the slightest doubt on that subject, that they are specific, particular powers which are not subject to that general clause.

Mr. Wagner — Now the question is whether or not the provisions in line 6 are not limited by the provisions which I am attempting to amend here.

Mr. Low — Mr. Chairman, I would like to state, for the information of Mr. Wagner, that the Committee is entirely in sympathy with what he is attempting to make more sure and I may say that no law under the guise of a general law applying to cities of over a million could be passed after this amendment is adopted. We felt obliged to yield the cities to the general laws of the State, for the reasons pointed out by Mr. Nicoll, but control of the whole intent of this amendment is to give the cities an exclusive field of their own to control their property, affairs and municipal government, and within that field we have by explicit language said that the Legislature shall pass no law — on page 6, line 11,— shall pass no law relating to the property, municipal government or affairs in any city — covering cities of over a million as well as small cities — except such as relate to all cities of the State, without classification or distinction. In other words, the Committee feels it has successfully met already what is proposed by Senator Wagner.

Mr. Baldwin — Mr. Chairman, referring to the subject which Mr. Wagner has called attention to, I beg to differ a little from Mr. Marshall of New York. Section 3 of the Constitution expressly provides that the legislative power of the State shall be vested in the Senate and Assembly. Now, the 27th Section of Article III simply says that the Legislature may delegate, or shall delegate. There is nothing inconsistent in that, but is there not inconsistency in providing in Section 1, Article III, that the legislative power shall be vested in a Senate and Assembly, and

then in our cities article say that it shall be vested in the city subject to the Constitution? Well, if it is subject to the Constitution, it is subject to Article III. This is a point on which I have differed from the remaining members of the Cities Committee, and I believe that, before we finish, we should express an exception in Section 1, Article III, which does not properly come up at this time, but I think there is something in what Senator Wagner says, and I think that doubt should be cleared up.

Mr. Low — Concerning Mr. Baldwin's doubt upon this subject, I conferred especially with Mr. Marshall, Mr. Wickersham, Judge Rodenbeck and with the President of the Convention, and they all concurred in the statement that in their judgment any amendment of Article III, Section 1, is unnecessary. If the Convention wishes to amend Article III, Section 1, of course it can, but that is the consensus of opinion which I received from those four gentlemen.

Mr. Olcott — Mr. Chairman, I want to address myself to the last branch of Mr. Wagner's amendment. It appears that all of us mean the same thing, and it certainly would seem to me it will elucidate this section by striking out, as suggested by him, in line 21, because it is true the courts have held that laws relating to cities of over a million inhabitants are general laws and you don't want any such law passed, because it would have special application on this point, and while it is true you cut out that possibility, it seems there is an inconsistency unless you accept his amendment on line 3; and I want to know from the Committee whether to accept Mr. Wagner's amendment would be for the clarification and harmonizing of that paragraph 6 to which Mr. Parsons has called attention.

Mr. Low — The objection I would make is that we are thinking of a different kind of law; such laws as Mr. Nicoll referred to in regard to banking, have no relation whatever as to property, affairs and municipal government of cities. It seems to me cities must be subject to laws of that kind. When we say the Legislature can pass no law except a general law affecting all cities in that field, I think we have covered the point.

The Chairman — The question is on the amendment of Senator Wagner.

Mr. Wagner — If no general laws can be passed affecting the exclusive power to manage, regulate and control the property, affairs and municipal government of a municipality except as they apply to all of a class, that is, unless they —

Mr. Low —All of a class.

Mr. Wagner — To all of the cities of the State without classification or distinction, what necessity is there for the other provision

subjecting the local management to the provisions of the general laws of the State? If you cannot pass any law which will affect their management except they apply to all the cities of the State without classification, I am at a loss to understand why these two classes of general law, why the exclusive power should be subjected to the two classes of general laws?

Mr. Low — The explanation is what I have tried to give. There are laws which are general which make different provisions as to cities, like the banking law, to which those cities ought to be subjected, but on the other hand those laws do not relate to the property, affairs and municipal government of the cities.

Mr. Wagner — The law which you have mentioned has nothing to do with property, affairs and municipal government?

Mr. Low — No, nothing whatever.

Mr. Wagner — So the local powers should not be subject to general laws of that character?

Mr. C. Nicoll — I have to disagree with Mr. Wagner. I think the power of self-government should be subject to every general law: The Civil Service Law, Criminal Law, Code of Civil Procedure, every general law should supersede, and on these matters the Legislature should be able to pass laws of that character whether they affect certain cities of the State or not, as long as they are matters of a general character and matters of State concern. The Election Law, for example, because I feel that in his innocence, Mr. Wagner may have overlooked it, that is a general law; but there are particular provisions which, with respect to the city of New York, do not affect its government, property or municipal affairs and these matters are matters of State concern and the State should control such matters as the Election Law.

Mr. Wagner — Mr. Chairman, I have not the suspicious mind that the gentleman from New York has. I am not hiding anything here nor am I trying to bring about any provision here which might affect the Election Law. It never entered my mind. I am perhaps too innocent to combat the gentleman from New York, Mr. C. Nicoll, yet I cannot understand, still, how the general laws to which he refers have anything to do with the management, regulation or control of the property, affairs and municipal government — something absolutely independent of it.

Mr. A. E. Smith — Mr. Chairman, I think I can clear that up for the Senator. What the committee is afraid of is, that if you give the full measure of home rule to the cities they may make some of these things their business and affairs to control and it is to prevent them from doing this that section 3 in this first paragraph is there and I am sorry that I have to disagree with my side-partner, because I think that is necessary there, for unless you

leave it there the city may seek to make it a matter of their affair, whether or not a department store shall be permitted to engage in the business of banking or hang out a sign "Bank," or "Banker," or may seek to license, if you please, steamship ticket agencies for the transmission of money abroad, which now under the head of private bankers come under State regulation. So we say every city shall have the power to regulate and control its property and municipal government subject to these general laws and then, in order to clear them, we say on page 6, the Legislature shall not pass any law relating to the property, affairs, etc., that is not applicable to all the cities without classification, and that, as I understand it, is the reason.

Mr. Low — Mr. Chairman, I move the adoption of that paragraph.

Mr. Wagner — Mr. Chairman, I withdraw the amendment.

The Chairman — The amendment of Mr. Wagner is withdrawn. The question is on the adoption of the first paragraph of section 3. All in favor of the motion will say Aye, contrary No. It is carried.

Mr. Low — Mr. Chairman, I now move the adoption of the second paragraph of section 3, beginning "Such powers shall be deemed to include among others," and subdivision *a,* I think it has not been changed in any respect from what it was in the previous bill.

The Chairman — The Chair desires to call the attention of the committee to the fact that about three-quarters of an hour of debate on the entire matter is left.

Mr. Wiggins — Mr. Chairman, I desire to offer an amendment, and before doing so to direct an inquiry to the Chairman of the Cities Committee with respect to that portion of the section contained on page 3, lines 4 and 5, in which it provides that this power among others shall include the right and method of removal of all city officers, including the police. Now, as I interpret that, it would permit the local authorities to provide for the removal of policemen from any city without the right of any court review and if I am correct or incorrect in that, I would be glad if the Chairman would please enlighten me.

Mr. Low — Mr. Chairman, I think it would permit the city to do that. Whether the city would do it, is quite a different question. It would also be within the power of the State by a general law to regulate that subject for all cities.

Mr. Wiggins — Now, the amendment I desire to offer, Mr. Chairman, is this, which I will hand to the Clerk to be read.

The Secretary — By Mr. Wiggins, page 3, line 11, strike out the period and insert a semicolon and the following words: "but not the right to regulate claims against the city."

Mr. Wiggins — The object I have in offering that amendment is this: under this provision of the Constitution, the city, which is the corporate body to be sued, may pass an amendment to a charter in which it said that the city shall not be sued unless two days' notice shall be given of the claim and an action shall be commenced in five days, because it then would not go down to a question of recompense as it does under the interpretation of this provision by the court, because the city would have the absolute right to enact any provision which it chose to pass with respect to the presentation of claims, or the manner in which the city should be sued, or it might withdraw the right of action against the city in some particular class of cases. As an example, cities of the second class in this State now have a provision in their general law providing that no city shall be sued for an injury arising by reason of the accumulation of ice and snow upon the sidewalk unless prior to the action you shall give written notice of the existence of the ice and snow and then go out and fall, and base your claim upon that notice given prior to the time that you fall. Now, I do not think it is fair and right that a city should have that great power given to it to entirely nullify the right of action against the municipality.

Mr. Marshall — Is not that a matter of State concern? Does it not relate to the administration of justice?

Mr. Wiggins — Certainly it does, but I think we have a right to regulate that kind of justice in this provision.

Mr. Low — Mr. Chairman, it seems to me that is pre-eminently a thing that should be controlled by general law. There is no reason why there should be one rule in one city and another in another city.

Mr. Steinbrink — May I offer this amendment?

Mr. Wiggins — Mr. Chairman, I might say before that is read, in answer to what Mr. Low says, that the reason I make this amendment is to take away from the city the right to do that very thing.

The Secretary — By Mr. Steinbrink: page 3, line 5, after the word "police" insert "subject to court review."

Mr. Steinbrink — Mr. Chairman, very briefly, the object of the amendment is this: I do not believe that after a man has passed the civil service examination and has served the city faithfully for ten or fifteen years or more, for some slight infraction, that the power should be given to any one officer in the city to strip the police force of man after man without court review. I do not think that it is an answer to say that the general law takes care of it, because, under the interpretation given just a moment ago, that on page 6, lines 11 to 14, the Legislature by general

law shall pass no laws excepting those applicable to all of the cities — I do not think that would prohibit the Legislature from delegating to the city of New York alone, if you please, the right to provide for the removal of its police by its police commissioner or by any other officer of the city, without court review. There has been one contest in the city of New York at least on that question which was decided against the proposition that the man should be removed without court review. Believing in the principle, I have offered the amendment.

Mr. Low — Mr. Chairman, I think that would be an extraordinary amendment to embody in the Constitution. I hope that the amendment will not prevail.

Mr. R. B. Smith — Line 5, page 3, the Proposed Amendment mentions specifically officers and employees of the police and health departments. Those are two of the four departments which exercise governmental functions. The question occurred to me as to what implied interpretation is left to the other two departments. It seems to me that if any enumeration is to be made of officers and employees exercising governmental functions, you should specify all or specify none. Secondly, I am not quite clear as to the status of borough officers in the city of New York. For some purposes, they may be city officers; for others, in view of the history of the construction of the boroughs, it would seem to me that that should be defined — officers and employees of a division of a city as well as of the city itself. Now, to clear up those ambiguities, I have endeavored to draw a substitute for the latter part of that section, which I have submitted to members of the Committee and which I think takes care of it.

The Secretary — By Mr. R. B. Smith. On page 3, line 4, after the word "of" strike out the balance of the section and insert: "officers and employees chosen by the electors of a city or a division thereof or appointed by its authorities except the judicial officers and employees attached to courts of record; also the power to regulate the compensation of all officers and employees of counties situated wholly within a city except officers chosen by electors and assistants and employees of district attorneys and officers and employees of courts of record."

Mr. Low — Mr. Chairman, I am not prepared to say that that amendment is not clearer than the amendment offered by the Committee but I must say that the Committee has worked over that paragraph "a" a great deal and looked at it from almost every point of view and agreed upon it in this form. At the last meeting of the Committee it was considered whether it would be advisable to amend it in some respects or to leave it as it is. The feeling of the Committee was that, as it had been in the bill so

long, although an improvement in drafting might be made by a change, it was better for us to leave it as it is. I feel, therefore, quite unable to accept the amendment for the Committee.

Mr. R. B. Smith — Mr. Chairman, having called attention to certain defects in the paragraph, I withdraw the amendment.

The Chairman — Mr. Smith withdraws his amendment.

Mr. Low — Mr. Chairman, I then move the adoption of paragraph "a" beginning with line 26 of Section 2: "Such power shall be deemed to include among others:" and then going to the end of paragraph "a."

The Chairman — The question is upon the amendment offered by Mr. Wiggins.

Mr. A. E. Smith — Mr. Chairman, I should like to have that amendment read again.

The Secretary — Page 3, line 11, strike out the period and insert a semicolon and the following words: "but not the right to regulate claims against the city."

The Chairman — All in favor of the amendment will say Aye, opposed No. The amendment is lost. The question occurs upon the amendment offered by Mr. Steinbrink. The Clerk will read.

The Secretary — By Mr. Steinbrink. Page 3, line 5, after the word "police" insert "subject to court review."

Mr. J. L. O'Brian — This subject was carefully gone over by the Committee on Cities on several occasions, and I certainly hope the amendment will not prevail. It would be a most extraordinary amendment to insert in a grant of power to cities the constitutional right of court review to every policeman in the State of New York, regardless of the city in which he happens to be. This is a matter which can be left to the judgment of the cities, subject to the provisions of the Civil Service Laws and the other general laws of the State. I hope the amendment will be defeated.

Mr. Wiggins — Mr. Chairman, this accomplishes the very object sought by Mr. Mitchel, I think, about a year ago, which was to take away the right of court review. If this goes through it will place in the power of cities the right to remove all police officers if the cities so decide to do. There is no other interpretation that can be given to the language employed in this amendment.

Mr. Low — May I ask the gentleman a question? I would like to ask whether he thinks that the police forces are without influence in their home cities?

Mr. Wiggins — They are without it in my city, but I have read in the public press that they are of some influence in the city of New York.

Mr. A. E. Smith — Mr. Chairman, for fear the Convention

may have the impression that there is any protection granted to the police and firemen in New York that is not granted by the civil service laws equally with the rest of the officials, I desire to make this point clear, that the right of the writ of certiorari is not in the Civil Service Law. It is a charter provision. In all the years that charter committees have been revising that charter they have thought it wise that the police and the firemen and the school teachers' salaries and the methods and manner of removing them should be left a matter of State business and of State concern. There was an attempt made in 1914, and I believe it received scarcely more than twenty-five or thirty votes in this house, to specifically take from the police of New York the right to the writ of certiorari, to review the proceedings upon which they were removed. The man that entered the police department did so under what might be called an implied contract made with the municipality, that contract having State sanction and having had it reiterated time and time again that they were entitled to a full review when they were removed. The great purpose of that was to keep politics out of the police department and it has effectively accomplished the purpose. It is not fair to say that the local authorities will disregard that because this very administration attempted in the first two months of its existence to have that taken out of the charter by an act of the Legislature. Now this is a very serious matter. No revision commission of the charter was ever bold enough to do this. Be careful of it. It is a live wire. It has more dynamite in it than anything you have yet put your hand on and it will undoubtedly raise thirty-five or forty thousand people against your Constitution if it is enacted. There is no question about that. Some such amendment that will prevent the local authorities from taking away that writ and leave it to the Legislature ought to be in this article before it is submitted.

Mr. Quigg — I call the attention of the Chair to the fact that the hour of 1 o'clock has arrived and that the Committee is automatically in recess under the rule until half-past two o'clock.

Mr. Wickersham — Mr. Chairman, I hope the gentleman will withdraw his point of order and let this particular matter be voted on before the Committee rises.

Mr. Quigg — If there is not too much debate, yes. I withdraw that for a moment.

The Chairman — The question is upon the amendment offered by Mr. Steinbrink. All in favor say Aye, opposed No. It appears to be lost.

The Chairman — A division is called for. All in favor of the amendment offered by Mr. Steinbrink will rise and remain standing until counted. The gentlemen will be seated. All opposed will rise. The Clerk will declare the result.

The Secretary — Ayes, 49. Noes, 56.

The Chairman — The amendment is lost.

Mr. Low — Mr. Chairman, I move the adoption of this paragraph.

The Chairman — The question is upon the adoption of the second paragraph of Section 3. All infavor of its adoption will say Aye, opposed, No. The paragraph is adopted.

Mr. Wickersham — Mr. Chairman, I move that the Committee take a recess until 2:30 P. M.

The Chairman — All in favor of the motion to take a recess will say Aye, opposed, No. It is carried. Whereupon, at 1:05 P. M., the Committee took a recess until 2:30 P. M. of the same day.

AFTER RECESS—2:30 P. M.

(Mr. Lindsay in the chair.)

The Chairman — The Committee will be in order for the consideration of General Order No. 50.

Mr. Low — I now move the adoption of paragraph "b" on page 3, beginning with line 12 and ending with line 23.

Mr. Baldwin — I have not had opportunity to confer with members of the Committee but I would like to suggest an amendment which I will now submit.

The Secretary — By Mr. Baldwin, page 3, strike out line 24 and insert the following: "Any such amendment shall be enacted by the legislative body of the city."

Mr. Low — Mr. Chairman, may I remind Mr. Baldwin that we are considering paragraph "b," lines 12 to 23. Line 24 has not yet been reached.

The Chairman — The amendment will be held and considered after paragraph "b" is disposed of. The question now is upon the motion of Mr. Low to adopt paragraph "b" to the end of line 23.

The Chairman — All in favor of the motion will say Aye, opposed, No. It is carried.

Mr. Low — Mr. Chairman, I move the adoption of the next paragraph, beginning with line 24, page 3, and ending with line 15 of page 4.

The Chairman — I will recognize Mr. Baldwin; he has an amendment.

Mr. Baldwin — I now move to strike out line 24 on page 3 and to insert the following: "Any such amendment shall be enacted by the legislative body of the city." If you will note the construction, I have simply transposed the words used in line 24.

I believe that necessary for this reason. As the article now stands you use the words "such amendments." Now, if you refer back to such amendments, you will find that it refers back to line 20, where the same expression is used "such amendments," and the amendments there referred to apparently are the amendments specified in line 15, which are a peculiar kind of amendment, quite different from the amendment that is specified in line 14 or in line 12. In other words, logically considered, we have granted power to the cities and we have classified those powers into two divisions: power over the matter specified in a, and in b, power to make certain amendments to the charter and to certain laws. Logically the question then arises how shall those amendments be made which are followed in line 24 by the words which I have suggested "Any such amendments," and there are three different classes of amendments that you have specified in b; any such amendments shall be enacted by the legislative body of the city. Now, that is the only change. I don't think that changes the substance, nor do I think it enlarges the power of the cities.

Mr. Low — May I ask Mr. Baldwin whether the same result would not be obtained by inserting the word "any" before "such," leaving the line read, "the legislative body of the city may enact any such amendment."

Mr. Baldwin — I think not, for the reason as I stated, the amendment would refer back to the amendment as used in line 20. So that the word "any" in front of it would not be the same as "any amendment," but it would be "any such amendment" and such an amendment referred to is the use of the same words in line 20.

Mr. Low — I understood you to propose "any such amendments shall be enacted."

Mr. Baldwin — "Any such amendments shall be enacted"; you are quite right.

Mr. Low — What is the difference in the effect of that clause, whether it comes at the beginning or at the end of the sentence?

Mr. Baldwin — In my judgment the difference is this. You have provided for power in the city. Under b, you say, the power to revise or enact amendments, and in line 14 power to enact amendments to a local charter, and then in line 15 you say, the city may also enact amendments to the charter, if the Legislature has granted them that jurisdiction, and then modifying that grant of power in line 15, you use the words, in line 19, "pursuant to the provisions of Section 4 of this article shall enact a law inconsistent with such amendment." Now, if you leave the language the way you have it in line 24, you still grant power, because it is an affirmative allegation, you say the legislative body of the

city may enact such amendment, and it seems to me it would be better to transpose it.

Mr. R. B. Smith — The word "such" in line 20, refers only to the amendments specified in lines 15 to 20.

Mr. Baldwin — Yes.

Mr. R. B. Smith —And the intention of the Committee was that the word "such" in line 24, should refer to such classes of amendments.

Mr. Baldwin — Both classes of amendments, I think.

Mr. R. B. Smith — Well, do you know of any rule of statutory construction that would give it that meaning?

Mr. Baldwin — I think not.

Mr. R. B. Smith — I think it absolutely ambiguous. If you use, instead of "such amendments" the expression "such amendments hereinbefore specified," it might be intelligible.

Mr. Baldwin — I sought to cure the difficulty which Mr. Smith has so ably pointed out by transposing the form of the language. It is not a grant of power, but it describes the method by which amendments can be made, and starting the sentence "any such amendments shall be enacted by the legislative body of the city," your thought goes back to the preceding paragraph which describes three different classes of amendments.

Mr. R. B. Smith — Is there any other class of amendments referred to before this?

Mr. Baldwin — None whatever.

Mr. R. B. Smith — Then why not strike out the word "such"?

Mr. Baldwin — I will gladly accept that amendment. I used the word "such" because of a feeling of my fellow members of the Cities Committee that that would in some manner enlarge the powers intended to be granted to the cities. As originally proposed by me, I left out the word "such." I would gladly grant it, but I think Mr. Smith will agree with me possibly it might include all amendments.

Mr. Franchot — If you strike out the word "such" in line 24, you obviate even the fanciful distinction that you attempted to make, do you not?

Mr. Baldwin — Well, I think, then, that makes bad English.

Mr. Franchot — Do you consider it bad English to say "The legislative body of the city may enact amendments"?

Mr. Baldwin — I do, in connection with the grant of powers which we have attempted to put into section "b." My amendment seeks to cure the ambiguity which I think exists there. Now, I may be wrong in the matter, but that is my opinion.

Mr. Franchot — It seems to me the distinction or the ambiguity which the gentleman alludes to does not exist, or, if it

exists in his mind, is purely fancy. The words "such amendments" very evidently refer back to the amendment specified in subdivision "b." It would be contrary to any proper rule of construction, in my judgment, to say that a particular amendment specified among others in subdivision "b" shall be singled back as the species of amendment to which reference is here made. I submit that the line of the section is entirely proper just as it stands.

Mr. J. L. O'Brian — It seems to me that the paragraph in here is of some significance and that the words "such amendment" in the paragraph beginning on line 24, refer to all of the kinds of amendments that are referred to in the preceding paragraph, beginning with line 12. Therefore, I don't see the ambiguity which is presented by some of the previous speakers. I think the language of the bill as it stands is clear enough without amendment.

Mr. A. E. Smith — I would respectfully suggest to the Chair that the Sergeant-at-arms be instructed to try to bring in the absent members.

The Chairman — The Sergeant-at-arms will notify members in the corridors that their presence in the chamber is requested.

Mr. Baldwin — Mr. Chairman, I would like to amend my amendment and substitute the following: Strike out line 24, and insert the words: "The amendments specified in paragraph 'b' shall be enacted by the legislative body of the city."

The Chairman — Will the delegate send the amendment to the desk?

Mr. J. L. O'Brian — Mr. Chairman, I should make the same objection to that because in that lurks the implication that other amendments would be enacted by the city and there are none such contemplated by the city. I therefore respectfully maintain my original position, namely, that "such amendment," as used in line 24, refers to all the amendments previously mentioned in paragraph "b," and therefore I hope the suggested amendment will be defeated and the bill be left as it stands.

Mr. Low — I have no doubt, Mr. Chairman, that it is intended to mean all of the amendments expressed in paragraph "b."

The Chairman — The question is upon the amendment offered by Mr. Baldwin.

The Chairman — Will the Secretary read the amendment in the form in which it now is?

The Secretary — Page 3, strike out line 24 and insert the following: "The amendments specified in paragraph 'b' shall be enacted by the legislative body of the city."

The Chairman — You have heard the amendment. All in

favor will say Aye, opposed No. The amendment is lost. The question now is upon the adoption of the first paragraph of subdivision "b."

Mr. Low — We have approved paragraph "b" down to line 24.

The Chairman — I should have said the second paragraph.

Mr. A. E. Smith — I desire to offer an amendment. In the event of its not being received, I would like to have the privilege of offering another, because the life of one is dependent to some extent upon the treatment the Convention affords to the first one. Now on page 3, line 6, we have the much debated provision, that of the submission to the Legislature of amendments changing the framework or restricting in any way the issuing of bonds or contracting debts. I think everybody will agree that, if there is any thing above all others that has created such widespread demand for home rule, it is the question of legislative interference with the internal business of cities, and particularly of the city of New York. It makes no difference how far you may go in your effort to give home rule, while you leave any loop-hole open for legislative interference with the business of a city, you have not accomplished the measure of home rule that people in the cities, particularly in the city of New York, expect from you. Now it can be remedied in a very simple way. Mr. Marshall's definition of "framework" has to do with the muscles and the tissue and the arms and legs of the body of the city as being the framework.

Mr. Marshall — It is not the tissues; it is the skeleton.

Mr. A. E. Smith — Upon which the tissue is constructed?

Mr. Marshall — Yes.

Mr. A. E. Smith — Well, I want to say that there will be very few amendments of that nature after the charter is once adopted. I doubt if there could be any amendments to the existing charter of the city, so there is nothing to be accomplished by this submission to the Legislature, letting the home rule proposition carry the stain and the blot and the weight of legislative nullification of the business of New York. There is no question but what there will be litigation over what is and what is not framework. In 1913, we passed a home rule bill in the Legislature which was signed by the Governor and became a law. One of its provisions was that, wherever a grant of power was given to a city with an express limitation in the grant, this home rule bill acted to raise that limitation so that the city could exercise that particular power or function to the limit. Nevertheless, the very first aldermanic enactment under it was set aside by the courts on the ground that they did not have the power. So you are going to have five or six, to say the least, years of litigation as to what belongs in the framework of the city and what does not. Now in my amendment

I provide that, upon the passage of an amendment which changes the framework or modifies the issuance or restricting of bonds, such amendment shall in thirty days after its passage become operative unless one per cent. of all the electors in the greater city sign a protest and file it with the City Clerk, in which event it is sufficiently contested and should be submitted to the electors at the next general or special election. I offer this amendment.

The Chairman — The Clerk will read the amendment.

The Secretary — Page 4, line 5, strike out all after the period. Strike out lines 6 to 15 and substitute the following: "Every amendment shall take effect as law upon the enactment as above provided unless such amendment shall change the framework of the government of the city or modify restrictions as to issuing bonds or contracting debts in which case it shall take effect thirty days after such enactment unless within that time a protest in writing executed by at least one per centum of the electors of the city shall be filed with the city clerk; and if such a protest shall be so filed, such amendment shall not take effect unless it shall be approved by the affirmative votes of a majority of all the electors of the city voting thereon at the next ensuing general election or at a special election to be called for that purpose."

Mr. Parsons — Is that the amendment requested by the Citizens' Union?

Mr. A. E. Smith — I believe that is either the Citizens' Union or the City Club. I don't know which it is. They all look alike to me. When they have a good idea, I always like to line up behind it. It seems to me that is real home rule. I don't mind annexing them when they are right.

Mr. J. L. O'Brian — I want to ask the gentleman if this is the first time he ever lined up behind them. He said he did so whenever they had a good idea.

Mr. A. E. Smith — No, sir I have followed the gentleman from Erie on a number of his propositions in my time.

Mr. Schurman — When this matter was up before we had criticism of this feature of the bill on the ground that it belittled the citizens of this city by putting them in the same class as the Filipinos, it being pointed out that this was a measure which has been adopted by the Committee on Cities from the practice of the government of the United States in relation to the Filipinos. I think that association of ideas has brought this measure — which I myself think is an exceedingly good one — into a certain amount of suspicion, not to say disfavor. I received this morning from the Citizens' Union, as I presume did all the other gentlemen of the Convention, a letter pointing out that, while this home rule measure as now introduced is a very notable advance in dealing

with municipal affairs and is a very satisfactory grant of home rule, it is open to two serious defects: One is the legislative veto and the other is the failure to give the city of New York control over the counties. I address myself at present to the first of those considerations. I cannot feel that it is a serious defect in connection with this bill. It is a simple recognition of a sovereignty of the State in its relations to the cities.

Mr. A. E. Smith — Let me put a practical question to the gentleman. Let us leave aside what the Citizens' Union thinks of it, or how it resembles the Philippine government, or what the sovereignty of the State is; but let me put a practical question to him. If the administration of the city was in control of Tammany Hall, and the local authorities desired one or more deputy police commissioners or one or more commissioners of accounts, does the gentleman think that there would be any trouble about having that nullified by the Legislature?

Mr. Schurman — Well, Mr. Chairman, that brings me to the very point I want to discuss. The Cities Committee have taken advantage of the well known fact of the inertia of Legislatures in dealing with matters referred to them in the interest of home rule. They have taken for granted that while measure after measure enacted by the cities would be reported to the Legislature, the Legislature would take no action thereupon, and the city would gain to that extent in the matter of home rule. Now, I want to show that that is the way, in practice, that this works, and I want to show also that while this plan has been compared with the plan which the United States has adopted in dealing with the Philippines, the plan has been adopted elsewhere in the world, and has been adopted with notable success. I have in my hand a volume of "Modern Constitutions," by Dodd. In the Constitution of the Dominion of Canada, passed in 1867, it is provided, "Where the Governor-General "— that is the Dominion of Canada — "Where the Governor-General assents to a bill in the Queen's name, he shall by the first convenient opportunity send an authentic copy of the act to one of Her Majesty's principal secretaries of state, and if the Queen in council within two years after receipt thereof by the Secretary of State thinks fit to disallow the act, such disallowance being signified by the Governor-General by speech or message to each of the Houses of Parliament or by proclamation, shall annul the act from and after the day of such signification." That was in 1867, the government relation between the British Empire and the practically independent nation of Canada.

The same policy was continued in establishing by law the constitutional relations between the British Empire and the Commonwealth of Australia, an act passed in the year 1900, Section 59

of that act reading: "The Queen may disallow any law within one year from the governor-general's assent; and such disallowance on being made known by the governor-general, by speech or message to each of the houses of parliament, or by proclamation, shall annul the law from the day when the disallowance is so made known." Furthermore, Mr. Chairman, that policy begun in 1867, and continued in 1900, in relation to the British Empire,— in determining the relations of the British Empire with the independent nations of Canada and Australia, was continued in South Africa in the act of 1909, when it was provided in Section 65: "The King may disallow any law within one year after it has been assented to by the Governor-General, and such disallowance on being made known by the Governor-General by speech or message to each of the Houses of Parliament, or by proclamation shall annul the law from the day when the disallowance was so made known." I submit, therefore, Mr. Chairman, that a plan such as this which has been devised in order to determine the constitutional relations between the great empire and the practically independent nations which are under its flag, is not a plan that can be said to be introduced here to the disparagement of any city in the State. Now, let me give you an illustration as to the way in which this policy works. Not only is it provided in the laws I have stated — not only is this provision made in the law I have described for the determination of relations between Great Britain and the South African colonies, practically independent nations, but the same provision is found in the Constitution of the Dominion of Canada, determining the relation between the Dominion's government and the legislatures of the several states and the provinces — that provision is to the effect that "Any act passed by a provincial legislature may be disallowed by the governor-general within one year after its enactment." That is to say the Dominion government has power to disallow any act passed by the legislature of Ontario, representing as that legislature does, some two millions of people. Now, how in practice does that work? Why, Mr. Chairman, the fact that the laws are reported to the central authority has proven in itself sufficient, and disallowance is an exceedingly uncommon thing. I regret to say that I have not the latest figures — the volume I have in my hand, "The Constitution of Canada," by Munro, is dated 1889. I venture, however, to say that the infrequency of disallowance has increased as the years have gone on, rather than diminished. What do we find? We find that of six thousand acts passed by the Provincial legislatures of Canada up to 1882,— from 1867 to 1882 — of the six thousand, only thirty-three have been disallowed by the Dominion government.

The Committee on Cities have adopted this scheme undoubtedly in the expectation that similar results will follow. Mr. Chairman, before I take my seat I want to say that while I think that this is an admirable feature of the bill and I hope that it will be retained, I am desirous, and I think I speak for a good many men outside of the committees, in the larger cities, especially a city like New York — I am desirous that the fullest measure of home rule should be given to these cities which is compatible with the sovereignty of the State, and I join with the Citizens Union in congratulating the Cities Committee on the admirable success they have attained, and in making the exceptions which the Citizens Union also makes.

The Chairman — The Chair desires to call the attention of the committee to the fact that the two hours' limitation has expired.

Mr. J. L. O'Brian — It is apparent that there must be further discussion on this measure, and I therefore move that the committee rise, report progress, and ask leave to sit again and that the final vote on this measure shall be taken not later than four o'clock, the speeches in the meantime to be limited to five minutes each.

The Chairman — All in favor of the motion will say Aye. Opposed, No. The motion is carried. The Committee will rise. (The President resumes the Chair.)

The President — The Convention will come to order.

Mr. Lindsay — The Committee of the Whole has under consideration General Order No. 50; it reports progress and asks leave to sit again, and it asks further that the time for debate and final vote be extended to four o'clock, and that the speeches in the meantime be limited to five minutes each.

The President — The question is upon agreeing to the request of the Committee of the Whole for leave to sit again and an extension of the time of debate until four o'clock under the five minute rule. All in favor of the motion will say Aye, contrary, No. The request of the committee is granted and the Convention will return to the Committee of the Whole, and Mr. Lindsay will be good enough to resume the Chair.

(Mr. Lindsay resumes the Chair.)

The Chairman — The Committee will come to order.

Mr. D. Nicoll — Mr. Chairman, when the Committee on Cities a few days ago brought in the first edition of their amendments I had occasion to say that I thought it contained a germ of home rule, of local self-government for cities and that it was capable of being so amended as to make a very valuable grant of power to the different cities in the State in respect to their local affairs, and I think it is only fairness and justice to say that the amendment

in its present shape is a long step forward and constitutes, if not a wholly adequate, yet a very substantial grant of power to govern themselves to the various cities of the State. The only question is, have we gone far enough to correct the real evil which surrounds the proposition? That takes us back at once to the contest that has been going on in this State for home rule for cities for over twenty years. It was very acute, as you all know, in the Convention of 1894. In that Convention the President appointed a Committee on Cities. Within about a month or six weeks the committee brought in a very substantial measure of home rule. That is, they provided that the city elections should be held separate from the National and State elections, for that was really one of the great issues of that time. The committee also provided an absolute inhibition directed to the Legislature to interfere with the local affairs and the local government of cities, and if that amendment had prevailed together with certain grants of power which were contained in the first report of the committee we should have had twenty years ago substantially the amount of home rule which the cities are getting now in this present amendment. I have just had occasion to turn to the remarks of one of the delegates to that Convention made in the course of the debate on the cities articles, Mr. Jenks. "Bear with me," he said, "for a moment while I recite the history of the cities proposition in this convention. The convention assembled. The distinguished president of the convention appointed a committee for the purpose of considering the various propositions relating to the good government of cities. That committee assembled and sat for weeks and weeks listening to every one in the State of New York who had anything to propose on the subject. They listened with patience and consideration to the views of all classes and conditions of men. Before that committee appeared whom? First, came the Committee of Twenty-One, representing all the reform associations of this State, and then came the distinguished president of Columbia College (Mr. Low) with his well considered views upon the subject. And what did they advocate? Did they advocate a retention by the legislature of this state of its powers over cities with regard to local affairs? Did they advocate any two-thirds or three-fifths vote in the legislature upon such question? Not at all. They advocated what all men know is essential to good government of cities, separate elections, and an absolute prohibition of the legislature to pass special laws in regard to either without the consent of the local authority. That was their proposition. Was Seth Low, when he appeared before the Committee on Cities, an advocate of Tammany Hall? Were the Committee of Twenty-One, when they stood before

the Cities Committee demanded as one of the essentials to a proper local self-government an absolute prohibition on the part of the legislature to interfere with the government of cities, the spokesman of Tammany Hall? Why, not at all. They spoke their own views. They simply spoke what every man in Convention knows, that it is impossible for cities to work out any scheme of better local government without separate elections and without an absolute prohibition on the part of the legislature to interfere at all with their local affairs. And then what happened? The majority of the Committee on Cities took up the proposition which had been submitted to them by the Committee of Twenty-One and by the other reform associations of this state, and they reported it to this convention and the distinguished chairman of the Committee on Cities over and over again, upon the floor of this convention, insisted, demanded, from this convention a provision absolutely prohibiting interference by the legislature in the local affairs of cities." Well, what happened was that that proposition failed, and it failed for two reasons as I say; in the first place, because at that time the population of the State of New York had not drifted to the cities, so that the cities were not as powerful as they are to-day. It failed for a second reason because in the last hours of that Convention we were in the midst of an agony of political discussion over the apportionment.

The Chairman— The gentleman's time has expired.

Mr. J. L. O'Brian — Mr. Chairman, I move that unanimous consent be granted to the gentleman to continue his remarks.

The Chairman — Without objection, it is so ordered.

Mr. D. Nicoll — Now, Mr. Chairman, the Committee on Cities finally brought through the Convention of 1894, what appears in the present Constitution, what is now recognized as a wholly insufficient protection to the cities in regard to their government and affairs. I say that the Convention of 1894 gave the people one of the principal things, namely, the right to separate the elections, that is, the separation of local elections from National and State elections, but they failed to give the other essential thing, and that is an absolute prohibition to the Legislature from tinkering with the government and affairs of cities, because we all know that, notwithstanding the provisions of the Constitution of 1894, that same tinkering with the affairs and the government of cities to a greater or less extent has been going on ever since. Now, the question before this Convention is are you going to allow this evil to continue? That is the only question. There can be no doubt that this article contains a very large grant of power concerning their local affairs and government to the cities; they will be given large powers; they may

make their own charters and they may amend their own charters, but in two respects it seems to me that we have left the door open. In this Section 4 it is provided: "Every amendment which changes the framework of the government of the city or modifies restrictions as to issuing bonds or contracting debts shall be submitted to the legislature", and that the Legislature may nullify, and make void the action of the city. So that you have still left it in the power of the Legislature to meddle with the government and affairs of the city. In this word "framework" by common consent is included all the substantial things which relate to the government of the city; that is, the entire change in its form of government, the transfer of powers from the board of aldermen to the board of estimate and apportionment, the abolition of the office of comptroller or the magnification of the office of chamberlain, and so on, all of those things are still left in the power of the Legislature. It seems to me that it ought to be made clear; that there ought to be a prohibition against interference on the part of the Legislature in purely local affairs, and we ought to make it certain that the cities shall have full power and the right to carry on their local affairs. Mr. Chairman, for that purpose I propose this amendment, certainly a very moderate amendment, a sort of a middle-of-the-road amendment, between those who want to give the cities absolute power over their local affairs and those who say we must respect the sovereignty of the State in some degree.

I have provided on page 4, line 12, after the word "legislature", to insert "by a two-thirds vote of the members elected to each branch of the legislature"; that is, the city government shall not be changed; it shall remain as the city authorities determine it, unless the Legislature by a two-thirds vote of the members elected to each branch of the Legislature decide to change it, because they believe a question of the sovereignty of the State is involved, and I intend to make the same amendment when we come to the question of the charter on page 5. It seems to me that if the city of New York or any other of the great cities of the State takes the pains to vote to have a new charter and appoints its commissioners, adopts a charter which is submitted to the vote of the people and then adopted, that the Legislature ought not to have the power to change that charter unless two-thirds of the Legislature think it is necessary to change it. I move the amendment, Mr. Chairman.

The Chairman — Will the Clerk please read the amendment? Will the gentleman please send the amendment to the desk?

Mr. D. Nicoll — Certainly.

The Secretary — By Mr. D. Nicoll: Page 4, line 12, after

the word "legislature" insert the words "by a two-thirds vote of all the members elected to each branch of the legislature."

Mr. D. Nicoll — Mr. Chairman, I will say that in the Convention of 1894, there was a great deal of discussion on this subject. When it came to the subject of the special city laws as brought in first by the Committee on Cities there was an absolute prohibition against the Legislature to pass any special city laws, but later on that was relaxed and the President of the Convention, Mr. Choate, proposed that when it was approved by the city no such law should be passed except by a three-fifths vote of the Legislature, but afterwards he retreated from that position and left it in the situation in which it is now. I move when the matter came up on third reading, first for three-fourths, then for two-thirds, and then for three-fifths, all of which at that time were voted down. But, it seems to me, that either two-thirds or three-fifths constitute a very sufficient check or guarantee that the Legislature will not unnecessarily disturb a charter or an amendment which has been adopted by the city.

Mr. Sheehan — By Section 2, as I understand it, every city is given exclusive power to manage and control its property, affairs and municipal government. May I ask if this provision, read in connection with subdivision *a* giving the city power to regulate the powers, duties, qualification, mode of selection, number, terms of office, compensation and method of removal of all city officers, will permit the city of New York, for instance, to abolish the office of mayor, or comptroller or other office filled by elected officials, and transfer the powers and duties of such officers to some other local authority elected or appointed.

Mr. Low — I would like to call the speaker's attention to the fact that that paragraph has been accepted, passed, and that we are now discussing the paragraph beginning at the bottom of page 3, line 24, and running to page 4, line 15.

Mr. Sheehan — Well, I assume, Mr. Chairman, that every part of this measure is still before the House until we finally take action on it and that every part of it is debatable.

Mr. Low — No, Mr. Chairman, that is not as I understand it.

Mr. Sheehan — However, I will not press the question if the gentleman from New York does not desire to answer it squarely.

Mr. J. L. O'Brian — Mr. Chairman, I rise to a point of order.

The Chairman — The gentleman will state his point of order.

Mr. J. L. O'Brian — I hardly think that is fair. The speaker has just come into the House. We have had this matter under discussion, and there is no desire on the part of the Cities Committee to forestall discussion. We desire to have this discussion and it is distinctly unfair for the gentleman who has just spoken to come

in at this hour of the day and make the comment, that he will not press this question if the Chairman does not desire to answer it squarely. This part of the bill has been passed for the present. If the gentleman wishes to reconsider the vote by which the paragraph was adopted, that is his right, and he should not indulge in such unfair statements.

Mr. A. E. Smith — Mr. Chairman, a point of order.

The Chairman — The gentleman will state his point of order.

Mr. A. E. Smith — My point of order is that the matter referred to by the gentleman from Erie does not constitute a point of order.

Mr. Low — Mr. Chairman, I think it would be better if we can keep on disposing of the bill paragraph by paragraph. If the gentleman wants to ask me that question at the end of the discussion I shall be glad to answer.

Mr. Sheehan — Mr. Chairman, I have no desire to offend the sensibilities of the gentleman from Erie. It was the least thought that I had in my mind.

The Chairman — The Chair hopes the members of the committee will confine themselves to the matter under consideration, which is the second paragraph, subdivision *b* of Section 3.

Mr. Sheehan — The theory of the amendment, Mr. Chairman, is that in the general election in 1917, and in every eighth year thereafter, every city shall submit to the electors thereof the question "Shall there be a commission to revise the charter of the city", and at the same time commissioners to revise the charter may be chosen by the electors of the city. Mark you, the two propositions are, first, shall there be a commission to revise the charter of the city?

Mr. D. Nicoll — I rise to a point of order, Mr. Chairman.

The Chairman — The gentleman will state his point of order.

Mr. D. Nicoll — The House is now discussing the home rule measure from the bottom of page 3, line 24, to line 16, on page 4, and after we have passed on that, I understand it is the intention of the Chairman to move the subsequent paragraph.

Mr. Low — It is. I would like to know if the gentleman from New York wishes to make any motion to alter the paragraph?

Mr. Sheehan — I have no amendments to make. I do not desire to make any amendments.

Mr. Low — As I understand the procedure, Mr. Chairman, the subsequent sections are not open to discussion until we get to them.

Mr. Sheehan — Mr. Chairman, I never understood the rule to be that a man is limited to debate certain lines of a proposition. That is a most monstrous proposition.

The Chairman — The Chair decides that the point of order is well taken. It seems to the Chair that a general discussion to amend the various subdivisions, after they have been adopted, would follow the motion to adopt the section or article, and to report it to the Committee of the Whole. The speakers will please confine themselves to the subdivision under consideration.

Mr. Sheehan — I understand, Mr. Chairman, that when the whole proposition is read through, the matter is then going to be up for unlimited debate.

The Chairman — The Committee has agreed to this rule and the proposition must be considered in accordance therewith.

Mr. Wiggins — Mr. Chairman, I move that the gentleman be given unanimous consent to continue for five minutes.

Mr. Wagner — I raise a point of order.

The Chairman — The gentleman will state his point of order.

Mr. Wagner — A motion cannot grant unanimous consent. The gentleman moves that unanimous consent be granted, which would mean that a majority may give unanimous consent.

The Chairman — The motion is that unanimous consent be given.

Mr. Wiggins — If Mr. Wagner will kindly place it in the right phraseology so that the Convention may understand what I mean, I hope that may be done for the purpose of permitting Mr. Sheehan to continue his remarks.

Mr. Wagner — I ask that unanimous consent be given to the delegate to continue.

Delegates — For how long?

Mr. Wagner — For one hour.

The Chairman — Does Mr. Wiggins press his motion that consent be given Mr. Sheehan for five minutes to continue his remarks?

Mr. Wiggins — I do.

The Chairman — All in favor will say Aye —

Mr. Wagner — I raise the point of order.

The Chairman — The gentleman will state his point of order.

Mr. Wagner — That can only be done by unanimous consent, otherwise this committee could change the rules of the Convention, which we have no power to do.

The Chairman — The Chair will hold that if the committee desires to permit any person to occupy more than five minutes, by general consent, that can be done.

Mr. Wagner — Exactly. It cannot be done by motion; it can be done by unanimous consent.

The Chairman — Not unless the motion is unanimous.

The Chairman — There is a motion for unanimous consent

for the gentleman to continue his remarks. Is there any objection? There being no objection, the gentleman will continue for five minutes.

Mr. Sheehan — I was about to say, Mr. Chairman, that the two propositions — shall there be a commission to revise the charter of the city and the election of commissioners — are linked together almost inseparately, but not quite. The first proposition must be submitted but nowhere is it provided that the question shall be decided by a majority of the voters. It is true that the commissioners shall be chosen by a majority vote, but, if a majority of the voters shall vote against the revision, the commissioner shall, nevertheless, be chosen by a majority vote and are to proceed with the revision and submit their completed work to the voters at a subsequent election. In other words, the people may be satisfied with their existing charter and for that or other reasons a majority of them may vote against revision. But an attempted revision they must have, because some candidates for commissioner will receive a majority vote, and, therefore, revision must proceed although the voters at the same election may have voted adversely on the proposition, shall commissioners be appointed for that purpose? Under this section the legislative body of the city may change the framework of the government, or modify restrictions as to issuing bonds or contracting debts and after submission to the legislature, it becomes a law in sixty days, unless disapproved by joint resolution of the Senate and Assembly. In other words, if both branches of the Legislature do not affirmatively repudiate the separate amendment, it becomes a law without further legislative action. Suppose, Mr. Chairman, that the Legislature is deadlocked politically, as has often happened, one party having control of the Senate and the other party having control of the House. What happens? I find opportunity is here presented for the legislative bodies of a great city to enact any kind of partisan or undesirable legislation with a certainty that legislative veto would be impossible on account of the conflicting political control in the Senate and Assembly. Mark you, this relates to the very framework of the city itself. As I understand this amendment, the thought is that after the cities adopt their charters, through the aid of a commission and the voters, changes in the charters can be effected only by special enactment and such legislation shall embrace only one subject and shall expressly declare that it is such an amendment. The charter, as contradistinguished from the amendments, can be adopted only after the people vote on the question, shall there be a revision of the charter, and after the revision prepared by the commissioners is approved by the electors.

When this is done the charter becomes a law within sixty days after its submission to the Legislature unless the Legislature by concurrent resolution disapproves. Suppose, Mr. Chairman, that the Legislature does disapprove of the charter, which is not unlikely. What happens? The succeeding Legislature cannot undo the work of its predecessor. It cannot repeal the resolution of disapproval passed by its predecessor. A political revolution may have followed the legislative veto, resulting in the election of a Legislature anxious to give assent to the vetoed charter, but that is not permitted. The only wholesale charter revision that is permitted must be approved of by a majority of the voters, and the particular revision so approved must be submitted to the Legislature during the first week of its session in January of the year following approval thereof by the people, and, under this amendment, it cannot be submitted to the Legislature in any other manner or at any other time. Let us suppose that in 1917 the people of the city of New York vote in favor of a commission to revise the charter, and that the subsequent work of the commissioners is repudiated at the pools, which is a possibility, to say the least. Where is the city of New York then? It must do the best it can for eight years under an antiquated and unwieldly charter. Some canny political leader will then discover that a committee of this body builded better than it knew. He will say — and I direct the attention of the distinguished Chairman of the Committee to the proposition — he will say: "We will have the local legislative authorities change the frame-work of the government. We will modify the restrictions relating to the issuance of bonds and the contracting of debts by separate amendments that will not have to be submitted to the people as charters have to be and our say so will be final and conclusive, particularly if either branch of the Legislature is in the control of those who sympathize with the plan." What is the remedy proposed by the Committee on Cities? Why, go back to the people in eight years, unless the Legislature permits an earlier referendum. Ask them to express an opinion at a general or special election whether there shall be another commission to revise the charter and whether there shall be another election to approve the new toy. If the Legislature considers the new product "a thing of beauty" and "a joy forever," it may not again interpose a heartless disapproval, but then it may, Mr. Chairman. When it is all over we will have the satisfaction of knowing that we have wrestled with home rule, lovingly embraced the referendum and coyly flirted with the recall of elected city officials.

Mr. Wagner — Mr. Chairman, I suppose at this time in the discussion of this proposal it is almost futile to impose a principle

or a fundamental principle of this whole proposal; namely, I have in mind the question of the giving of the power to the Legislature to nullify the legislative acts of the local authorities. The Smith amendment which is now before us proposes to eliminate that feature from the so-called home rule bill, and leave matters as to all local regulations, as to property, affairs and municipal government within the locality. Now, I shall speak not so much from what I have read upon the principle of home rule, but more upon my experience as a legislator. My belief is that the majority of the members of this Convention have a misconception as to what originally created and fostered the agitation for home rule for cities. I have heard it stated here that it should be unnecessary to impose upon a municipality the purely perfunctory motions of getting the ordinary legislation from a legislative body. But that has not been the main complaint of our municipalities, and the agitation was not born because of that. It was because of the Legislature, because of political differences failed to grant to a municipality some great reform which it was seeking, and for that reason the home rule agitation is stronger, I think, within the city of New York, than it is within any other city of this State. I judge that also from the fact that members coming from and representing other sections of the State — municipalities of other sections, do not seem to have in them the enthusiasm for absolute home rule which seems to be within the breast of the representatives, most of the representatives from the metropolitan district. And I say that agitation is because upon all ordinary perfunctory legislation, the Legislature never determines the merits, but the local representative from a particular locality tells the Legislature, "My city wants this," and the Leguslature at once gives it, and if he says, "My city should not have this," the Legislature refuses to grant the particular piece of legislation. So that, as to that, it was never an act of the Legislature. It was the act of the representative of that particular community having a seat in the Legislature. Now, as to the other theory upon which this agitation for home rule is really based, namely, some great reform. Take in our city of New York where the local authorities wanted some change in our government to accomplish something which they believed was backed up by public sentiment and was for the benefit of their constituency. What happens in that case? Why, if the Legislature is of one political faith and the local authorities agitating this great reform are of another, the question of politics absolutely determines whether that locality shall get that reform or not. And that has been so— that has happened so many times in the last twenty years that New York and some other cities, too,

have said: "When we believe that a thing is for our interest, and it has nothing to do with State functions, we deny the right of the representative from Erie or of Chautauqua or from other sections of the State, who say, "While we know nothing about the intricacies of your problems, while we know nothing about your problems, yet we have decided that you down there in your local matter shall not get the reform which you desire, because you were indiscreet enough to elect a mayor and a board of estimate and apportionment or something else, who differs with us upon political matters. And that, gentlemen — Mr. Chairman I will ask that my time be extended, I will take but a few minutes longer.

Mr. Low — Mr. Chairman, I ask unanimous consent that the gentleman may continue.

The Chairman — Without objection, the gentleman's time is extended.

Mr. Wagner — Now, that has been the seriousness of this whole home rule situation. That has been the most serious problem to solve on this home rule situation. It has been really the only problem to solve on this home rule situation, and it is the one problem which you have, in my judgment, failed to solve; for so long as you keep this power in the Legislature, from Erie or from Chautauqua or from Broome or somewhere else, to say to us in New York — mind you, now, I am not speaking of State functions, but purely municipal government functions — I say, so long as you leave it to him to say whether we shall have that, you are depriving us of the very home rule for which we are pleading and have been pleading for some time. And so I say, if you want to give New York city — because that is where I come from, and I cannot speak for other sections of the State — the home rule which the people there think they ought to have, then you must do away with this nullification provision, because with that omitted from the bill you have an excellent home rule proposition. With that in the bill you have not solved the only real home rule problem which is up for solution. Now, I differ from my distinguished friend from Columbia when he says that no more can be done. This morning in speaking of this home rule proposition he sent a message or an injunction or an ultimatum, if you will, to the people of New York, and said no more can be done. Now, it is within your power to give this other home rule which is the genuine home rule and which you are refusing to the city of New York — and I will not say that the gentlemen who have been working upon this home rule problem are actuated merely by politics, but in the hearts of those less innocent than some

members of this committee, lurks this hope and this aspiration: New York city has been useful to us at times, and we must not let go, and we are going to keep that string with which to tie New York's feet so that whenever we want them to move in another direction, even as to local functions, we can pull that string and they have got to come in our direction. Now, I plead with the gentlemen who want to satisfy the advocates of home rule to show your sincerity, because you are sincere. I don't question anyone's sincerity, it is a point of view, that is all; but show your sincerity, your sincere desire to give them genuine home rule by eliminating this nullification feature and you will get the everlasting thanks and support of the people of the city of New York.

Mr. Aiken — I would be in favor of granting a further measure of home rule if the Convention is so disposed, in favor of Mr. Smith's proposition, if that meets the views of the Convention; in favor of Mr. Nicoll's proposition to us, if that meets the approval of the Convention. It seems to me that we have been tied up so long to the idea that the State Legislature should control that it is hard work to get out of it. Attention has been called to what has been done in other countries — Canada and other British provinces. Let me call attention to three German cities, the three cities of Hamburg, Bremen, and Berlin. They have absolute control of their city government and all of the city affairs. The great German Empire has not the power to go into those cities and change any of their local affairs and it is not an experiment to them, because they have had it for seven or eight hundred years, ever since the middle ages. Now if Hamburg, with a population of 600,000, can conduct its own affairs without any interference by the German Empire, why cannot the city of New York with its much greater population manage its own affairs? It seems to me that we should not attempt to interfere with the framework of government of cities. The framework has been compared with the home. It seems to me the better figure would be the topographical characteristics of the city streets, highways, and squares and we know how difficult it is to change them and I have in mind the story about the crooked streets of Boston, how they came to be formed in the early days; how the calf wandered away from its mother, wandered around through the woods and how an hour or so later the cow became aware that it had lost its offspring and she wandered along the same moist path and later in the afternoon the farmer and dog missing the cow and calf went after them, and so later on other calves and other cows and other men and dogs went along this same path, until the path became a trail and as the trees were cut down and the village grew, it became a street of the village and later on a

street of the great city of Boston. That, gentlemen, is tradition and it shows after you once get a certain condition fixed how hard it is to change, and that it seems to me is the condition we are in with reference to home rule. We have had the strings of the Legislature on the city so long, we don't know how to change.

Mr. Low — Mr. Chairman, I may have heard with indistinctness but if I caught correctly the tenor of the remarks of Governor Sheehan, his fear was that if the Legislature were politically divided the house would not exercise its power. Otherwise I think his view is not in harmony with that which has been just expressed. Now let me call attention to this very great change which this bill will bring about in the relations between the city and the Legislature, even as to those matters which affect the framework of government. At the present time bills come up from New York city, from the Mayor, or they come from some department. The Legislature has no knowledge but hearsay, as to whether they represent the united views of the city or not. Under the operation of this law, any proposal which would reach the Legislature from the city would have to be passed, first, by the Board of Aldermen after a public hearing and discussion. When approved by them it would go to the Mayor and after being approved by him it would go to the Board of Estimate and Apportionment, with the result that when it reached the Legislature it would be an expression of the city's will in that respect, such as has never reached the Legislature of the State of New York in the past — formally, deliberately, after public hearing. My personal opinion is that when such measures relate only to the government of the city itself, it is very rare indeed that even a partisan Legislature would annul it; certainly not unless there were at home a division so marked as to carry the fight from the city to the Legislature. That might occasionally happen, but very rarely. Mr. Nicoll has truly said that this is a very great step forward. I think it is the longest step that can be taken at this time. The Cities Committee has wrestled with this problem in every possible aspect and we are united in recommending this. I think the effort to ask the committee to go further would result in disunion where we now have union, and I submit to this Convention that we are perfectly safe in taking this step, with the confidence that, if events show that a further step is necessary, it can be taken much more easily than this one. In other words, when great changes are to be made in the relations between the Legislature and the cities, I think it statesmanlike to go as far as we can together and not attempt to go so far that we divide ourselves. I hope that this section will be adopted as reported from the Committee.

The Chairman — The question is upon the second paragraph of subdivision "b" of Section 3.

Mr. Low — Beginning at line 24 and running to the end of line 15 on page 4. There are several amendments which should be voted on first.

The Chairman — The question is upon the amendment offered by Mr. A. E. Smith.

The Secretary — By Mr. A. E. Smith. Page 4, line 5, strike out all after the period. Strike out lines 6 to 15, and substitute: "Every amendment shall take effect as law upon its enactment as above provided, unless such amendment shall change the framework of the government of the city or modify restrictions as to issuing bonds or contracting debts in which case it shall take effect thirty days after such enactment unless within that time a protest in writing executed by at least one per centum of the electors of the city shall be filed with the city clerk; and if such protest shall be filed, such amendment shall not take effect unless it shall be approved by the affirmative vote of a majority of all the electors of the city voting thereon at the next ensuing general election or at a special election to be called for that purpose."

The Chairman — The question is upon the adoption of the amendment. All in favor will rise and remain standing until counted. The gentlemen will be seated. Those opposed will rise. The amendment is lost.

Mr. Wagner — Mr. Chairman, I offer the following amendment. I can explain the difference between it and the one just defeated in a moment. I think this ought to be a very fair compromise. It provides that where a Proposed Amendment affects the framework of government, it becomes a law within thirty days unless one per centum of the electors of a city ask that the matter be submitted to the Legislature, in which case it must be submitted to the Legislature for either their approval or disapproval. That is a fair compromise.

Mr. A. E. Smith — Mr. Chairman, if I may be permitted, I would like to make a little further explanation for the necessity of that amendment. Suppose that in the month of February it should be discovered in New York city that, instead of having two commissioners of accounts, the city could get along with only one. Under your proposal here, absolutely nothing can happen in that case for nearly a year and a half. Now that is the fact. Mr. Marshall evidently thinks otherwise.

Mr. Marshall — The question between one and two commissioners of accounts I should not consider as constituting a vital question.

Mr. A. E. Smith — Now we are getting into the discussion of the framework. Let us say the question is whether there shall

be four or five police commissioners. That is the framework. There may be no objection to it. Why should it have to wait a year or fourteen months if no person objects to the change? The Senator's proposal is that, if no objection is made, it automatically becomes law, and, on the filing of the protest, it then comes to the Legislature to be fought out here.

The Chairman — The question is upon the amendment offered by Mr. D. Nicoll.

Mr. J. L. O'Brian — The same objection would apply to-day if the city of New York does not discover until July that it can get along with less. The only way a charter can be amended to-day is by an act of the Legislature. If the Legislature is not in session, the city has to wait. So I think there is very little force in that argument.

Mr. Wagner — Mr. Chairman, I assume you are trying to improve conditions, and that that is the object of this home rule proposition. If we are to leave everything as it is now, then we might better not be here. The argument that under present conditions the city cannot do that is a very weak argument, it seems to me, for opposing something which will improve the system.

Mr. J. L. O'Brian — Mr. Chairman, it is weak to the gentleman's ears only because he ignores the fact that under this proposed grant very few measures will come to Albany in connection with city charters.

The Chairman — The question is upon the amendment offered by Mr. D. Nicoll. The Clerk will read.

The Secretary — Page 4, line 12, after the word "Legislature" insert "by a two-thirds vote of all the members elected to each branch of the Legislature."

Mr. Low — Mr. Chairman, I would like to say that that amendment was very carefully considered in the Cities Committee and it was felt that the measure should be left as it is.

The Chairman — All in favor of the proposed amendment will say Aye, opposed No. It seems to be lost. It is lost. The question now occurs upon the amendment offered by Mr. Wagner. The Clerk will read the amendment.

The Secretary — By Mr. Wagner: Page 4, line 5, strike out all after the period. Strike out lines 6 to 15, and substitute: "Every amendment shall take effect as law upon its enactment as above provided unless such amendment shall change the framework of the government of the city or modify restrictions as to issuing bonds or contracting debts in which case it shall take effect thirty days after such enactment unless within this time a protest in writing executed by at least one per centum of the electors of the city shall be filed with the city clerk and if such

protest shall be so filed such amendment shall be submitted to the Legislature in the year nineteen hundred and sixteen on or before the fifteenth day of February and in any year thereafter during the first week of its next regular session and shall take effect as law sixty days after such submission unless in the meantime it shall be disapproved by the Legislature by joint resolution."

The Chairman — All in favor of the amendment will rise and will remain standing until counted. The gentlemen will be seated. Those opposed will rise. The amendment is lost.

Mr. A. E. Smith — I said at the opening of my remarks that I had one or two — that I had more than one amendment to offer and that one was dependent on what happened to another. Now I desire to offer another amendment. I want to say that I believe this is something that we can all stand for if we really mean to do anything right at all. Of course, I extend my sympathy to my friends, and include myself in it, when I think of how foolish it is for us to stand here on the floor of this House and attempt to take away from the principality of Albany that control over its subjects in New York that has been its very life and its very existence for twenty years. The very first political quarrel in the Convention over apportionment could be swept aside entirely, were it not for the fact that that control means the control of New York. Why, I feel like laughing at myself, to think we are so foolish, when I see the solid delegation from the southern tier and the St. Lawrence river district and the western tier and the central part of the State standing here like one man, telling us "Why, you have got to leave it there."

Mr. Sanders — A point of order.

The Chairman — The gentleman will state his point of order.

Mr. Sanders — There is no motion before the House.

Mr. A. E. Smith — Yes, sir; there is a motion before the House, a motion to amend as indicated, and I will send it up to the desk in a moment. Now, here is what I ask the Convention to do. I ask the Convention to take this question of the apportionment of aldermanic districts away from Albany. The man who is not willing to do that wants to keep his grip not only upon the charter and its provisions and the government but he wants to even keep his hands on Manhattan Island and the Boroughs of Kings, Queens and Richmond themselves.

The Chairman — The Secretary will read the amendment.

The Secretary — By Mr. A. E. Smith: Page 4, line 13, after the word "resolution" insert the following: "The term framework of government as used in this article shall not be deemed to include the determination of the boundaries of the districts, if any, from which the local legislative body is elected."

The Chairman — The question is upon the amendment offered by Mr. A. E. Smith.

Mr. Low — Mr. Chairman, may I say that an alternative was offered by Senator Foley —

The Chairman — The Chair desires to call the attention of the Committee to the fact that the hour for voting has arrived. Further remarks are not in order.

Mr. Wagner — Mr. Chairman, I move that the Committee rise, report progress and ask leave to sit until five-thirty. There are a number of matters here that we ought to be permitted to discuss. The Convention has been going on very well so far. Don't let us have a charge of "gag rule" in the closing hours on a matter so vitally affecting New York as this does. It will be an hour and a half well spent, it seems to me.

Mr. J. L. O'Brian — Mr. Chairman, I think this should be granted, in view of the fact that the member who has spoken, as well as others, was not able to be present during the three days that we discussed this matter before.

Mr. Wagner — Let me say to the gentleman that I was here during those three days, more often, I think, or just as often, as the gentleman from Erie. I did not miss any part of the discussion except on a Monday morning.

The Chairman — The question is upon the motion of Mr. Wagner that the Committee do now rise, report progress and ask leave to sit until five-thirty. All those in favor of the motion will say Aye, opposed No. The motion is carried.

(The President resumes the Chair.)

The President — The Convention will come to order.

Mr. Lindsay — The Committee of the Whole directs me to report that they have had under consideration General Order No. 50, made progress, and ask leave to sit again, extending the time for debate until five-thirty.

The President — The question is upon granting the request of the Committee, based on the assertion that they have made progress. All in favor say Aye, contrary No. The motion is agreed to. The Chair assumes that the five-minute rule is to be continued for the remaining time.

Mr. Lindsay — The five-minute rule, as I understand, is to be continued.

Mr. J. L. O'Brian — Mr. President, does that carry with it that the final vote shall be taken at five-thirty? If not, I move to amend it.

The President — The Chair thinks it does.

Mr. J. L. O'Brian — I make the further motion, Mr. President, that when the Committee resumes consideration of the

pending general order, which is now a special order, the final vote thereon be taken not later than five-thirty.

The President — All in favor of the motion say Aye, contrary No. The motion is agreed to. The Convention will again resolve itself into Committee of the Whole for the consideration of Home Rule. Mr. Lindsay will be good enough to resume the Chair.

(Mr. Lindsay resumes the Chair.)

The Chairman — The Committee will be in order. The Chair understands that we are to vote and the discussion is to close at five-thirty, with the understanding that the five-minute limit is to be embraced in this arrangement, and is to continue.

Mr. Wagner — I propose another amendment. I ask that in line 9, page 4, the word "February" be eliminated and the word "March" be put in its place. The reason for that is this: You will notice in the next paragraph a provision that the Legislature shall make provision for a public notice and an opportunity for a public hearing by the legislative body of the city concerning such an amendment, that is, any amendment that may have to be submitted to the Legislature. Now if this Constitution takes effect on January first, before the local body can act these general rules must be provided for a hearing and it is reasonable to suppose that it will take at least the month of January for the Legislature to make provision for notice of the acts of the local legislative bodies, so that it seems it is practically prohibiting the city from submitting any amendment to the Legislature during next year, because they cannot possibly have the Legislature — I see some nodding of the head, so I assume my amendment is agreed to.

Mr. Low — You make it the 15th of March instead of the 15th of February?

Mr. Wagner — Yes.

Mr. Low — I will accept that amendment.

Mr. Wagner — I congratulate myself and the Convention upon getting something added to the proposal.

Mr. Low — In regard to Mr. Smith's amendment, concerning aldermanic districts, may I say that Senator Foley submitted an amendment which was referred to the Cities Committee, covering in the main the same subject and embodying the idea that, in case of complaint, any citizen could appeal to the Supreme Court as to the fairness of the districting. That commended itself so far to the Committee on Cities that they appointed a sub-committee to consider it, of which Senator Foley is the chairman, and he has not yet reported. It seems to me it would be a mistake to accept this suggestion now. It is much better for us to wait and get the report of the Committee, and, if necessary, deal with it when it is on the order of third reading.

Mr. Wiggins — I am in sympathy with the substance of this amendment. The difficulty with it, I think, however, is that it is wrong in this particular place. As Mr. Low has said, there is an amendment pending before the Cities Committee to provide for just such a matter as is covered by this amendment, that is, that cities should be given permission, and you will find it as printed No. 507, introductory 495, by which the legislative body of a city may determine the districts from which aldermen are elected, subject to a court review. There is a sub-committee of the Cities Committee which has this in charge, and, while I am in sympathy with the amendment, I think that the amendment should not prevail here because of the intention of the Cities Committee to pass upon it and report upon the subject to the Convention at an early date. I do not mean by that that it is their intention to report favorably, because we never have discussed the matter, but I know it is their intention to take it up and pass on the subject.

Mr. Parsons — Mr. Smith's amendment would allow the greatest gerrymandering there ever was and without any chance to prevent it or review it. Now, on principle in regard to redistricting is provided. It contains no such terms as the reapportionment provision of the Constitution, and there will be no way of preventing such a gerrymander because the Legislature, or the people of the State would have no say in regard to it.

Mr. Wagner — Could there have been a review of the aldermanic gerrymander which passed this Legislature this year and was vetoed by the Mayor?

Mr. Parsons — The Legislature passed that; the Aldermen didn't.

Mr. Wagner — It makes no difference. The principle is just the same.

Mr. Parsons — The Mayor passed upon it.

Mr. Wagner — The principle is just the same.

Mr. Parsons — I disagree with the gentleman.

Mr. Wagner — Now, as to whether — is a review less divine when it applies to a State legislative act than when it applies to a local legislative act, or is it less necessary?

Mr. Parsons — There is — you are not willing to have any review at all here. And, further, in the proposition as it is submitted, what the Board of Aldermen might do would be to provide that the Aldermen be elected from the city at large, because it says "the districts, if any" into which the city shall be divided. And there would be no chance to prevent that whatsoever.

Mr. Wagner — The Legislature to-day can provide for any method of electing members of the board of aldermen and redistricting them in any way they see fit, and there is no court

review, and let me say, to correct the statement you made, that this would permit the greatest gerrymander ever. No, there is no greater gerrymander that could ever come about than the one passed in the last session of the Legislature.

Mr. Parsons — The point I make is this: This gives the power to the majority of the local legislative body to perpetuate itself for from four to eight years by a gerrymander which could not be reviewed by the Legislature, the mayor or by the people.

The Chairman — The question is upon the amendment of Mr. A. E. Smith. Those in favor will say Aye, those opposed No. The Chair is in doubt. Those in favor will please rise. Those opposed will please rise. The amendment is lost.

Mr. Wagner — Mr. Chairman, I offer the following amendment.

The Chairman — Does Mr. Wagner withdraw his former amendment? The former amendment was accepted, was not voted upon. The question now is upon the amendment of Mr. Wagner. The Clerk will read.

The Secretary — By Mr. Wagner. Page 4, line 9, strike out "February" and insert "March."

Mr. Low — I accept that, Mr. Chairman.

The Chairman — All in favor of this amendment will say Aye, opposed No. The motion is carried.

The Chairman — Mr. Wagner introduced an amendment which the clerk will please read.

The Secretary — By Mr. Wagner. Page 4, line 3, after the word "body" insert the following: "Whenever a Proposed Amendment is disapproved by the Mayor, it shall not become a law or be submitted to the Legislature unless it receives the assent of two-thirds of all the members elected to such local legislative body."

Mr. Wagner —As the proposal now is before us, the disapproval of the mayor of any legislative act absolutely kills that proposition. Now that is contrary to all our legislative history, I think, in this country or in any other country that I know of; I mean in a republican form of government, and I take it that the Committee really overlooked this proposition. This simply provides the same rule with reference to the local legislative body that is now in vogue in the State Legislature. When the Governor now disapproves, vetoes a measure, it may become a law by a two-thirds vote of the Legislature over his veto. And I simply provide that where the mayor disapproves a local legislative — the act of a local legislature, that it may become a law by a two-thirds vote of the board of aldermen, and I would put in there "and the disapproval of the Board of Estimate and Apportionment." That

ought to be incorporated in my amendment; and where it must be submitted to the Legislature and it is disapproved by the mayor, that it may be then submitted, if it receives a two-thirds vote of the local legislative body.

Mr. Low — Mr. Chairman, I hope that amendment will not be adopted. For ordinary legislation the rule which the Senator speaks of is all right. But we are giving to the local authorities the power to amend charters in such respects as ordinarily is not permitted, and in the city of New York, as everyone knows, the mayor is the one official who, when a candidate, attracts public attention; he carries in with him, if he is successful, ordinarily, almost everyone else on the ticket. To say that the mayor, who is clothed with such power under the New York charter that he makes all the administrative appointments, can be overridden by a two-thirds vote of aldermen elected by districts seems to me an impossible proposal. In ordinary legislation, yes. But see what might happen. The Board of Aldermen, with a two-thirds vote, might strip the mayor of all his power, if it could gain the consent of the Board of Estimate and Apportionment. Seven of those votes out of sixteen come from boroughs, and it would only need an agreement between the boroughs and one other city official to strip the mayor of almost every power that he has. It is a vital part of this amendment, I assure the members of this Convention, that the consent of the mayor should be absolutely necessary. Neither does it affect only the city of New York. You must remember that every city in the State has these powers, and where they have no Board of Estimate and Apportionment that is wholly elected, these vital changes in the framework of the city government under this amendment could be made by a two-thirds vote of the Board of Aldermen. I assure you that unless the judgment of the members of the smaller cities in the Cities Committee is wholly at fault, it is quite as vital for the small cities of the State that the consent of the mayor should be essential as it is, in my judgment, for the city of New York. I hope this amendment will not be accepted.

Mr. Wagner — Mr. Chairman, that makes an extraordinary situation with reference to this local power, this local home rule we are getting, and I am a little surprised at the attitude of Mayor Low, because under the proposal as we now have it, the mayor of the city can absolutely stand against any reform of any character. Even though the unanimous sentiment of the community should be for that reform, there is absolutely no way that it can be secured. Now I am willing that you should make that a three-fourths vote. I do not care how far you go to protect it. If you say that it is needed to protect the community from its

own representatives, and that the community cannot really trust its own local representatives and must have the mayor as a protector, then I say, provide that, unless three-fourths of the local representatives advocate the reform, it cannot be enacted. But to say that the mayor of the city shall have the power to stand up against any reform that may be enacted by any locality without any appeal within the municipality, is an extraordinary situation and something new. We cannot do that to-day. We, in the Legislature, can override his veto by a majority vote and then it goes to the Governor for approval or disapproval. This is a most extraordinary provision in this proposed amendment and I am astonished. I thought it was an oversight when I first saw it. It will make ineffective, it seems to me, the whole theory that we were giving to the locality the right by their legislative body, instead of by this legislative body, to respond to a public sentiment. And yet you stand one man right in the center, who is a czar, you might say, or a king, and he says "yes" or "no" and that determines the whole question.

Mr. J. L. O'Brian — It never was the intention of this committee, in granting what it thinks is a very sweeping measure of home rule, to grant to the board of aldermen of any city supreme power over the city. It was the intention of the committee to recognize in every city the same relations which exist between the Legislature of the State of New York and the Governor of the State of New York. It was our intention to take cognizance of the fact that in every city we have an executive as well as a legislative branch of the government. It was the deliberate intention of the committee to require in this home rule that those two branches of the government in the locality should concur before the charter could be amended. I think the gentleman who has just spoken is trying to create the idea that there is only one city in the State of New York, an idea that I find frequently entertained by some members of this body. There are many cities in the State of New York in which there are no boards of estimate and apportionment with wholly elective members. In those cities it is necessary that the mayor, as well as the board of aldermen should be required to vote in the affirmative before the charter could be amended. I earnestly hope that the amendment proposed by the gentleman will not prevail.

The Chairman — The question is on the amendment offered by Mr. Wagner. The Clerk will read. If there is no objection, the reading will be dispensed with. All in favor will say Aye. Opposed. No. The Noes appear to have it. The amendment is lost.

Mr. A. E. Smith — I desire to give the Convention one more chance. I propose an amendment, which, briefly, means this: If the subject matter of a proposed amendment to the framework of the city government, after arriving at Albany, is debated to any great extent by the citizens of that city, I propose to give the power to the Legislature, and in the event of its being unwilling to act on it, to refer it back to the city and let the people decide it themselves. I will tell you what I have particularly in mind. Take, for instance, the agitation in New York for the creation of a bureau or a department of markets. Now there are a great many people that believe that will decrease the cost of living, and, for that reason, believe in the city embarking upon it as a municipal project. There are, on the other hand, a number of business men that do not believe the city has any right to undertake any such feature as that and call it an activity of government. The Legislature would be unable to pass on that question because there would be only one side of it represented in Albany. The realty and the business men can come here but the rest of the people have to stay at home. They haven't the way of getting here nor the means. I propose by my amendment to leave the power in the Legislature to say to that city, "Why, this is a question of sufficient importance not to have it passed upon by the votes of the gentleman from Essex and the gentleman from Ontario and the gentleman from Warren and the gentleman from Clinton and the gentleman from Washington, who will have no knowledge of the peculiar conditions which surround this question and the agitation there is for and against it in New York, and we propose to send this back to you and let you in your city decide it by referendum." That is all my amendment does. I can see no objection to it.

Mr. Low — Mr. Chairman, it seems to me that a question of that kind ought to be decided by the legislative body of the city in connection with the mayor and the board of estimate and apportionment. Mr. Smith will realize that, when that agitation began in the city of New York, it was never brought before the Board of Aldermen. When it reached the Legislature no one knew what the local sentiment was as expressed by that board.

I take the opportunity again to emphasize what I think is a very radical change which this amendment proposes in the interest of the city, that, when anything is submitted to the Legislature, it comes with the full force and effect of a united city government. Under those circumstances, I hope that the amendment will not prevail.

Mr. A. E. Smith — Mr. Chairman, I desire to point out to the chairman of the Cities Committee that he is clearly in error in

that idea because of the history of the last twenty years in this chamber, here and in the Senate, which is far from being in the direction of what you have just said. That is one of the reasons why this committee is so strong this year for home rule. In a few words let me tell you something that happened this year. A majority of the board of estimate sent a certain bill to Albany and asked that it be passed in both Houses and sent down to the mayor, and as soon as that bill reached here, a minority, a minority in the board of estimate, who were unable to force their ideas upon the majority in their own body, had sufficient political influence to have that bill put into the shape in which they wanted it, and that is the way it passed this House and the Senate, and that is the way it went to the Governor, and to the mayor, only to be vetoed by the mayor because it was directly opposed, in direct opposition to the ideas of the majority of the board of estimate and apportionment on that question; and it is pretty generally understood, and I might go further and say it is pretty well known that if the mayor had vetoed that bill in time and it could have gotten back here, it would have been passed in both Houses over his veto. Now, there is no question in my mind about that at all. You have the wrong idea about this. That is the point I am trying to make. A majority in the Board of Estimate and Apportionment now can send a bill up here and by the time it gets down to the mayor he would not recognize his own child, and that is just exactly what we have been attempting to cure.

Mr. Low — Mr. Chairman, that statement brings out precisely what I was urging; that none of these bills had behind them the action of the board of aldermen, the legislative body of the city, action taken after a public hearing and after a public debate. If they come up here with the city government behind them, and not with a part of the government opposed to them, they will receive the treatment they should. My suggestion is, and I believe it is sound, when they come up here with a united city government behind them, that is, the board of aldermen, the board of estimate and apportionment, and the mayor, they will be very differently treated.

Mr. A. E. Smith — No, I cannot see that at all. I can see no difference between that and the situation that I have just presented here, where the majority of the board of estimate and apportionment sent this bill up here and was finally put into the form that represented the ideas of the minority, and so far as the board of aldermen is concerned, let us get that out of our minds, because my good friend, John L., from Erie, is just after letting the cat out of the bag; you never intended to give any degree of

home rule whatever to the board of aldermen. You know that. It is to be given to the Mayor. The united action in that case means whether or not the Mayor is ready to stand for it. All the rest is simply some mayonnaise you put over the salad.

Mr. Quigg — I take it, sir, that you can elect your own mayor?

Mr. A. E. Smith — Oh, yes.

Mr. Quigg — Then why cannot you cure that evil? If there is any disagreement between your local legislature and your mayor, get a new mayor.

Mr. A. E. Smith — That is very true. I am not discussing the proposition of our wanting to come up here. I would like to leave it right down there.

Mr. Wagner — Mr. Chairman, if the gentleman will yield, I would like to state that if he and some of his colleagues had supported my amendment we would not have to come to Albany. We don't want to come here. You are driving us up here to Albany.

The Chairman — Mr. A. E. Smith's amendment will be read.

The Secretary — By Mr. A. E. Smith: Page 4, line 13, after the period insert "the Legislature by joint resolution may enact that the amendment shall be submitted to the electors of the city in which case it shall not take effect unless approved by the affirmative vote of the electors of the city voting thereon, in the next ensuing general election or at a special election to be called for that purpose.

Mr. A. E. Smith — Mr. Chairman, I ask for a rising vote.

The Chairman — All in favor of the amendment offered by Mr. A. E. Smith will rise. The gentlemen will be seated. Those opposed, rise. The amendment is lost.

Mr. Low — I move the adoption of the paragraph which has been under discussion.

Mr. Baldwin — I hope that the gentleman from New York, the Chairman of the Committee on Cities, will withhold that motion, as I would like to offer an amendment, and I ask unanimous consent that this may be considered and voted upon upon its merits because it relates to the difficulty which I tried to impress upon this Convention when I made my other motion to amend, and I appeal from the decision of the House that there is no difficulty in the language which has been employed here. I refer to the correction, or to my amendment to correct the words "such amendments" as used in line 24, page 3, and because the words "such amendments" are used and it is the meaning of those words that I intended to make definite by my former amendment, which met the same fate as the other amendments that have been offered. I ask permission now to go back to the preceding section in order to verify the language of both of those

sections. And I hope that I may have the attention of the Convention, because this is a matter of construction, and as attorneys we ought all to be able to agree on what this means in years to come. Now, in line 12, page 3, we say "The power as hereinafter provided"— now, that is a word of limitation; bear that limitation in mind —" to revise or enact amendments to its charter in relations to its property, affairs or municipal government and to enact any amendment to any local or special law in relation thereto." Now, having in mind the limitation in that word, we then go on to express the limitation and the real grant of power is in the next sentence, because we have said so in the preceding sentence, and the real grant of power is as follows: "A city may enact amendments to its charter and any existing special or local law in relation to any matter of State concern, the management, regulation and control of which shall have been delegated to the city by law, until and unless the Legislature pursuant to the provision of section 4 of this article shall enact a law inconsistent with such amendments." And after granting that, and in granting that, you have proceeded to take the very heart of home rule out of the provision by the very language you employed. You limit it right down to a narrow construction of the power that the Legislature may hereafter grant to cities over the questions that are of State concern. And then follows the language in line 24. "The legislative body of the city may enact such amendments," and that is the very thing we have been talking about, and unless you correct that the city has no authority to change a salary or to determine whether two, three, or four or five members shall constitute a body or anything of the kind. To correct that, in which endeavor to correct by the other amendment, I was voted down, I offer the following amendment.

Mr. Low — Mr. Chairman, I move to reconsider the paragraph "b" to which this amendment relates so that it may be in order to amend it. I ask unanimous consent that we reconsider that paragraph.

The Chairman — The motion before the House is to adopt this paragraph. This is a motion to reconsider a former paragraph.

Mr. Baldwin — I think it is necessary, Mr. Chairman, because my amendment really relates to the one that has already been adopted, and that is why I would ask unanimous consent that this amendment might be considered at this time, because the paragraphs are so inter-related.

Mr. Low — I will withdraw, with the consent of the Committee, my motion to adopt the following paragraph, beginning on line 24, page 3, so that this paragraph may be reconsidered.

The Chairman — The motion to adopt the paragraph is

withdrawn and the motion before the House is Mr. Baldwin's motion to reconsider a former paragraph.

Mr. J. L. O'Brian — Paragraph *b*.

The Chairman — The motion is to reconsider the vote by which paragraph *b* was adopted. All in favor of the motion will say Aye, opposed No. The motion is carried.

The Chairman — Mr. Baldwin offers the following amendment, which the clerk will read.

The Secretary — On page 3, line 15, after the word " thereto " strike out the words " a city may " and insert, semi-colon " also to " and on line 20, strike out the words " with such amendments " and insert the word " therewith."

Mr. J. L. O'Brian — Mr. Chairman, I intended to offer an amendment in part to the same effect as Mr. Baldwin's, and I will offer that as a substitute at this time.

The Secretary — By Mr. J. L. O'Brian. Page 3, line 20, strike out the words " with such amendments " and instead insert the word " therewith."

Mr. J. L. O'Brian — Mr. Chairman, the ambiguity which has been suggested as to the meaning of the words " such amendments " beginning at the bottom of the page, line 24, is the ambiguity which Mr. Baldwin's amendment is intended to cure. I, myself, do not concede that ambiguity, because as I said a moment ago, in discussing this matter, the words " such amendments " in the new paragraph, beginning with line 24 were intended to cover the kind of amendments referred to in paragraph *b;* but, if this amendment which I now offer is adopted, and it is satisfactory to a majority of the Committee, I think your ambiguity, Mr. Baldwin, will disappear. In line 20, if you strike out the words " with such amendments," so that the clause will read " shall enact a law inconsistent therewith," you take out the root of the ambiguity which has caused this annoyance. I object personally to the first part of the amendment offered by Mr. Baldwin which is to change the wording of line 15, because if you will stop and look at that paragraph, you will have one very long sentence, over eight lines long, consisting of two sentences, put in juxtaposition, which would make it rather involved, and you will have a very clumsy result. It is my view, and a view of the majority of the Committee that the entire ambiguity is removed by striking out the words " with such amendments " in line 20 and instead inserting the word " therewith," and I move the adoption of my amendment.

Mr. Baldwin — What is the meaning of " as hereinafter provided " ? Would that not be interpreted to mean the next sentence in which you prescribe what power the city is to have ?

Mr. J. L. O'Brian — No, and for this reason: The sentence to which Mr. Baldwin calls attention, line 15, deals simply with amendments affecting the delegated powers of the city and the paragraph beginning on line 15 deals with matters of State concern. The first part of the previous sentence relates to amendments, which relate to municipal government. The second paragraph, as I said, deals with matters of State concern, and the next paragraph, beginning with line 24, relates to all kinds of amendments, and I think if you stop and analyze it that the view of the Committee is right and that this one amendment which I have offered will cure the difficulty.

Mr. Franchot — I wish to add to what Mr. O'Brian has said, if you change the period to a semicolon in line 15, and insert "also to", there would still be some doubt as to whether the Legislature might not enact laws which would set aside action with respect to the property and affairs and municipal government, as well as the actions with respect to matters of State concern.

The Chairman — The question is upon the amendment of Mr. O'Brian, which is to amend the amendment of Mr. Baldwin. All those in favor will say Aye, opposed No. The amendment is adopted. The question is upon the amendment of Mr. Baldwin as amended. Are you ready for the question?

Mr. J. L. O'Brian — No, Mr. Chairman, my amendment was offered as an amendment in the form of a substitute for Mr. Baldwin's amendment.

The Chairman — I understood the gentleman to say that it was an amendment to Mr. Baldwin's amendment.

Mr. J. L. O'Brian — Mr. Chairman, I thereafter stated that I offered it as a substitute.

The Chairman — The gentleman from Erie offered this amendment as a substitute for the amendment of Mr. Baldwin's. By a misunderstanding the Chair put it as an amendment to the amendment of Mr. Baldwin. All those in favor of the substitute offered by the gentleman from Erie will say Aye, opposed No. The motion is carried.

Mr. Low — Mr. Chairman, I move that we adopt paragraph *b* as amended.

The Chairman — The question now is upon the adoption of the first paragraph of subdivision *b* as amended. All in favor will say Aye.

Mr. Sheehan — Mr. Chairman, is it in order to offer an amendment with respect to page 5, the last paragraph of page 5.

The Chairman — We are still considering the adoption of paragraphs on page 3. The question now is upon the adoption

of the first paragraph of subdivision *b* as amended. All those in favor will say Aye, opposed No. The motion is carried.

Mr. Low — I now move the adoption of the second paragraph following *b* in page 3, commencing at line 24, and ending with line 15 on page 4.

Delegates — Question.

The Chairman — All in favor of the motion of Mr. Low to adopt the second paragraph of subdivision *b* will rise and remain standing. The gentlemen will be seated. Those opposed will rise. The paragraph is adopted.

Mr. Low — Mr. Chairman, I now move the adoption of the paragraph beginning in line 16, page 4, and ending in line 19.

The Chairman — The question is on the adoption of the paragraph beginning in line 16, and ending in line 19, page 4. All in favor of the adoption of this paragraph will say Aye, opposed No. The paragraph is adopted.

Mr. Low — Mr. Chairman, I now move the adoption of the next paragraph beginning in line 20 of page 4, and ending in line 17 of page 5. May I remark before closing, that the final sentence of that paragraph is, " The Legislature shall by a general law provide for carrying into effect the provision of this paragraph." The Cities Committee is quite aware that it will require careful thought to provide for the submission of the question, whether there shall be a revision at all, and, if it is adopted, whether a certain charter amendment proposed shall be adopted.

Mr. R. B. Smith — Mr. Chairman, I offer the following amendment.

The Secretary — By Mr. R. B. Smith, on page 5, line 14, strike out the words " within sixty days thereafter " and insert the following " during such sessions."

Mr. R. B. Smith — Mr. Chairman, this paragraph relates only to the sessions of the year one thousand nine hundred and seventeen. Now, it is presumed that all cities who wish to take advantage of the home rule provided will submit charters to the Legislature. The provision that the Legislature can consider those charters only during the first sixty days of its session, to me and to any man who has served in the Legislature, assuming that the city of New York, the city of Buffalo, the city of Niagara Falls, and such other cities as shall feel distressed by present conditions —

Mr. Westwood — And the city of Middletown?

Mr. R. B. Smith — Yes, the city of Middletown,— and such other cities as will feel distressed by present conditions will take advantage of the opportunity, and the Legislature will have before it from 5 to 57 charters of cities ranging from 250 to 450 pages

each. Now, the proposition that the Legislature during the first sixty days, when it is well known that it takes twenty days to get its committees in operation and in working conditions, are to pay any attention to those charters, it would seem to me to be absurd and not to be worthy of consideration. Now, if it is the intention that the Legislature shall simply make a pro forma examination of the outside title page, then they have enough time in which to do it. Now, if it is intended that the Legislature shall take the word of some one man in each of these cities and pay no attention to what is inside the cover, then we had better get together and stand back of the Citizens Union's proposition, that the charter shall not be submitted to the Legislature at all. Personally, I have no choice in the matter, but I submit, if you are going to give the consideration of these charters to the Legislature, then give them ample time in which to consider their provisions. Just consider the New York charter. How long would it take this body to consider the New York charter and pass upon it intelligently?

Mr. A. E. Smith — Seven years.

Mr. R. B. Smith — I mean this seriously. Either we should expect intelligent action, and give the Legislature time in which to give the matter of these charters intelligent consideration, or else we should take it out of here, and not make a farce of a provision which seems to give some power to the Legislature and in fact does not give it any power at all.

Mr. J. L. O'Brian — Personally I think the position taken by Mr. Smith is entirely correct, but this practical question suggests itself to my mind. If you turn to lines 13, 14 and 15 you will see what I mean: "And if not disapproved by the Legislature by joint resolution within sixty days thereafter shall thereupon take effect as law except as therein otherwise specified"; and, it seems to me, that by putting in the words "during such sessions", you make a little ambiguous the meaning of the following words "Shall thereupon take effect." I would like to ask Mr. Smith whether in his judgment it would not be better to fix a definite time limit; for example, to make it read, "If not disapproved by the Legislature by joint resolution before the 15th day of May thereafter, it shall thereupon", and so forth.

Mr. R. B. Smith — In reply to your question, let me say that that would depend entirely upon the amount of work which was coming to the Legislature from those cities and the amount of time which they had to devote to it. I can readily anticipate that if charters are received from the cities of New York, which is distinctly one line of government, of Buffalo, which is another, and Rochester, which is another, and then the second class and

third class cities, that the session might well continue until after the first day of May. I think it would be clear that the charters would then take effect at the close of the session. If it is not clear it should be made clear.

Mr. J. L. O'Brian — The only question which occurred to my mind, and I think we are in accord on it, is that it may become a very important question as to exactly when the charter would take effect. It might be changed to read upon the adjournment of the session —

Mr. R. B. Smith — Yes, on the adjournment of the session; that could be remedied by striking out " within sixty days thereafter " and inserting " upon the adjournment of the Legislature."

Mr. Wagner — Are you in favor of submitting the question of the adoption of a charter after it has been voted for by the people to the Legislature?

Mr. J. L. O'Brian — I assumed that my vote in favor of the proposition demonstrated that fact.

Mr. Wagner — It bewildered me for a moment, because I recall that in our last discussion upon the Cities Committee bill you told rather dramatically of the methods pursued by the Cities Committees of the Legislature in adopting a charter.

Mr. J. L. O'Brian — Of course, that was what occurred in the unregenerate days of the Legislature.

Mr. Wagner — Oh, I see. Then this is going to change human nature? You are going to change human nature and our whole system of legislation by this proposal?

Mr. J. L. O'Brian — Yes, but not the human nature of the members from New York, in the Legislature, I hope, Mr. Wagner.

Mr. Wagner — They need no improvement such as is needed upstate.

Mr. D. Nicoll — I don't want to be continually looking a gift-horse in the mouth, and I repeat what I said a moment ago that I recognize that in this amendment there is a substantial grant of home rule to cities. I recognize the fact that the people in this State look at this home rule proposition from several points of view. We have the point of view of the advanced home rule reformer, who wants to see the city of New York in the same state as Hamburg or Bremen, or some of the other German free cities. On the other hand we have the old guard from the country who want to go on with the pleasant and sometimes profitable government of cities. Now, between those two extremes this committee has adopted the present compromise. Of course, it did not go far enough from the point of view of those of us who live in the city of New York, and therefore, I supported by my vote the various amendments offered by Mr. Smith and Mr.

Wagner. My sincere apprehension is that the honorable members of the Cities Committee whom I believe really want to put an end to what has been going on in the State of New York for over forty years, that is the government of the city of New York from Albany by power left in the Legislature to eternally tinker with its charter, are going to be disappointed when these provisions come to work out in practice. They are going to find out that a very large part of the old state of affairs will still continue, and, therefore, with some confidence on account of the brilliant success of Mr. Wagner in changing February to March, I now move to amend on page 5, line 14, as follows: After the word "thereafter" insert the following words "and by a two thirds vote of the members elected to each branch of the Legislature." That, gentlemen, as you will see, is merely carrying out the view I have expressed before, and I believe that unless we adopt it, or something of the same character, those sincere home rulers on this Committee on Cities, who agreed to this compromise are going to be disappointed, and I shall live to see the day when they shall say so to me. Now, what is the reason for that? Perhaps it is none of my business as a voter in the city of New York, and yet I may be excused from saying that I have never yet been able to understand why we should compel all the fifty-six cities in the State of New York, whether they want it or not, to go into the business of amending their charters. It looks to me like turning the State upside down. I am informed that a great many of the cities of this State, especially cities of the third class, and many of the second class are very well satisfied with their form of government. Really, the trouble is not with them, it is with the cities of the first class, New York, Buffalo, Rochester, Niagara Falls and other places. Is Niagara Falls in the second class?

Mr. Franchot — At any rate, Mr. Nicoll, if you will yield to an observation, it is not a second class city.

Mr. Wagner — Not even that?

Mr. D. Nicoll — Now why should we compel every city of the State to start in next fall revising its charter and compel it to have an election answering the question whether or not it wishes to revise its charter and then elect a body of commissioners. There may be some good reasons for it.

Mr. Franchot — If you will yield, Mr. Nicoll? Aren't you aware that if you do not adopt the particular section proposed by the committee in this regard you are put to a choice between allowing the legislative authority of the city to initiate the charter amendment or allowing the people themselves to initiate.

Mr. D. Nicoll — Yes, I understand that.

Mr. Franchot — Which of the two alternatives would you suggest?

Mr. D. Nicoll — I would suggest that the local authorities determine it, so I propose this amendment, after general election, the charter shall otherwise provide, and every eighth year thereafter every city of the first class and every other city if its local authorities shall so determine shall proceed to, at a general or special election, submit to its electorate — every city of the first class and every other city if its local authority shall so determine.

Mr. J. L. O'Brian — Mr. Chairman, as one of the members of the committee, I think I can explain my own views on this subject. If you leave it in the hands of the local authorities to decide when the question shall be submitted, then you forever put it out of the reach of the people under this bill to change their form of government, unless they can bring sufficient pressure to bear on the local authorities so that they will act. Now, I don't know whether the gentleman who has spoken is aware of it, but we have to-day a special city charter bill in this State whose privileges are available to all cities of the second class and all cities of the third class, and merely by filing petitions of ten per cent. of the voters of those cities, the city goes automatically through the throes of holding a special election and voting on one of five optional forms of government and if one form is voted down immediately ten per cent. of the electors can file a petition for another form. In one city of the State, for example, we have had the spectacle of two special charter elections within six or eight months' time. Now it was the view of the Committee on Cities, that the matter should be fixed by the Constitution in such a way that the people should be certain of having a chance at a definite time to vote on their forms of charter. In the first place, we want to get away from this vice, which is apparently the method which we have discarded, of having a charter election every few months in a town or city and in the second place we want to give into the hands of the people as distinct from the local authorities the power to determine the form of commission they shall live under.

Mr. D. Nicoll — Well, if that is so, why not make this provision like the optional bill and provide that at the option of a certain percentage of the electors — why compel them to have an election, if nobody wants it?

Mr. O'Brian — Well, Mr. Chairman, this argument, it seems to me, is without great force, for this reason: The people do not have to accept a charter. It simply gives them opportunity to vote on it at a fixed time, and saves them from being forever under the control of their local authorities. This matter which has been suggested by Mr. Nicoll was raised by some members of

the Committee and thoroughly discussed by the Committee, and the Committee feel very strongly in favor of their pending measure as drafted.

Mr. R. B. Smith — Mr. Chairman, I desire to withdraw my previous amendment and offer this in its place.

The Secretary — By Mr. R. B. Smith. On page 5, line 14, strike out the words "within sixty days" and insert "prior to the first day of July."

Mr. Wiggins — Mr. Chairman, I have an amendment to offer which is along the line suggested by Mr. O'Brian and along the lines suggested by Mr. Nicoll. The amendment which I have to propose seems to me to be necessary in order to preserve the thought which Mr. O'Brian expresses. Now you will observe by referring to the bill, that on page 4, line 21, these words I use, "at the general election, in the year 1917 and" here are the significant words "unless its charter shall otherwise provide in every eighth year thereafter." Now, that means that when you amend this charter you will provide in there there shall never be an amendment to the charter again, because if you take another step you will find on page 5, that when this Commission gets the revision it is filed with the clerk when completed. It does not have to file within one or two years. They may wait until a general presidential election comes and then, by reason of the political complexion of the city — take as an illustration the party to which I belong: Suppose the Republicans are in control of a city of the State and they have a Republican commission and the Republican commission forms this charter for the benefit of the Republican party and they defer its report until the presidential election, and then at the presidential election the Republican party which has drawn this revision places it before the people in a Republican city and it goes through, and in that charter there is this clause: "This charter shall never hereafter be amended"—

Mr. Wagner — Mr. Wiggins, after the Republican city has adopted that charter and thought it a very good and wise charter, and it came up to the Democratic Legislature, do you suppose the question of politics would enter into the matter?

Mr. Wickersham — Having in mind that only twenty-five minutes remain of the session and having regard for other business before the House, I deem it my duty to object to any extension of the time. I call the attention of the Committee to the situation.

Mr. Wiggins — Now, Mr. Chairman, Mr. O'Brian seemed annoyed at what I said, but I did not mean it as a criticism of the work of the Committee. I am a member of the Committee,

but I think it a fatal defect if we should so decide that a city should amend its charter so that it may never be amended again, and the amendment I propose is to strike out those words so that there should be, every eight years, a revision. Then you must of necessity have submitted to the citizens of the city every eight years the question as to whether there should be a special revision. Then if you take Mr. Nicoll's suggestion, you amend it to be voted on by a certain number of electors. For that reason I offer this amendment.

The Chairman — Mr. Wiggins' amendment will be read to the Committee.

The Secretary — By Mr. Wiggins. Page 4, line 21, strike out the words "unless its charter shall otherwise provide in."

Mr. Sanders — Mr. Chairman, I would like to ask Mr. Wiggins a question bearing on what he has just said, and the amendment he has proposed, whether there could not be an amendment to the charter in the eight-year interval initiated by the legislative authorities which would so change the charter as to restore the provision for the eighth-year submission to the people, or making some other provision.

Mr. Wiggins — It goes right back to the question as to what the framework is. Possibly there might be a revision eight years, or two months from now.

Mr. Sanders — It does not affect the right of amendment but only the question of whether the amendment initiated by the local legislative authority would be subject to annulment.

Mr. Wiggins — Then there is no use of having Mr. Nicoll's amendment, because if the legislative authorities can nullify an act to the people when they see fit, and say whether the charter amendment shall be in the eighth year or whether it shall be once in five years, then there is no use in having the other amendment, because if you intend by your remarks to say the legislative authorities shall at any time provide for a charter which says — There is no use in this amendment at all.

Mr. Burkan — Mr. Chairman, in my amendment, I provide that the number of commissioners shall be twenty-two instead of sixteen; that one commissioner shall be elected in each Senate district. The idea is to give equal representation in each Senate district in the city of New York under the Proposed Amendment, each section would now be represented. Nine men may come from one borough, or one district. Now, there is a diversity of conditions in every part of New York. The conditions are different in Richmond from those in the Bronx or Queens, and are different in those boroughs as compared to the conditions in Manhattan. Now, it seems to me there is a change in Manhattan

Island. Conditions are entirely different. It ought to be a Democratic commission representing each and every part of the city of New York, so that the views of each and every section of the city of New York might be heard and considered in the making of a charter. It should be a charter of the people, of all the citizens of New York, and it is my view that this amendment, as it stands now, is not Democratic. It is not even Republican. It is autocratic; it is designed to elect a certain number of gentlemen, all of whom may come from one section of the city of New York, and they will legislate and they will prepare a charter for the government of the citizens of the great city without even knowing the conditions prevailing in another section of the city. There cannot be any objection to my plan. It is Democratic. We are all sitting here, we all come from Senate districts represented in this body, and it seems to me the same condition should prevail in the city where the population is five million and over, and nearly half the State, and the conditions are so diverse, and there is so much antagonism. Now, under my proposal, in New York there will be ten; in Brooklyn eight; in the Bronx, one; in Queens, two; in Richmond, one. There will be absolutely fair representation, so that each and every part may be heard in the revision of that charter. I cannot see from any point of view why my plan is not safe, and it is not unwieldy, there are only twenty-two of us — I say us, those coming from the city of New York —

Mr. Parsons — Is it a fact that every Senate district is represented in this Convention?

Mr. Burkan — Yes.

Mr. Parsons — The thirteenth Senate district? Who is representing the thirteenth district?

Mr. Burkan — There are men who represent that district; the voters regarded them as qualified to represent them in the Convention.

Mr. Parsons — The delegates from that Senate district do not live in the district.

Mr. Burkan — That makes no difference.

Mr. Baldwin — They spend about ten hours of every day there.

The Chairman — The gentleman's time has expired.

Mr. Olcott — Mr. Chairman, I would like to ask Chairman Low or some of the other members of the Committee what happens if the answer to the question to be voted upon, "Shall there be a commission to revise the charter of the city?" should be in the negative? What happens with regard to the election of the commissioners? Do you propose that the Legislature shall take care of that and say that in that case the election of the commissioners

shall be a nullity? It would be awkward at some election to ask me if I was so minded to vote no on the proposition, "Shall there be a charter revision," and at the same time to express my choice as to who should revise the charter that I do not want to have revised. It is a little like an election with a string to it. I can see some budding statesman who would be informed and learn with glee that they were elected commissioners on this important matter, only to find out that they had not stayed up late enough at night to find out that the question had been answered in the negative and their function was without function. I don't know that there is any way to fix that, but it strikes me as an awkward piece of Constitution-making.

Mr. A. E. Smith — I desire to offer one final amendment. To confine the delegates to the Constitution, the Good Book says, "While the light holds out to burn, the vilest sinner may return." I have received some very liberal education this afternoon on this whole question of home rule. I wanted to know what was the matter with the home rule amendment, why we spent so much time waiting to see it on our desks. I was told by one of the members that it was the very great difficulty which they had in distinguishing between what was a State concern and what was a purely local concern. Well, I thought there was really something to that, and I limped around here for three months believing that to be the fact; but this afternoon, since luncheon, I have found out what is the matter with home rule. I have found out from our ex-Congressman from New York, Mr. Parsons, when he was speaking about something which is a purely local matter, if any thing could be purely local, the fixing of the districts in which the aldermen are to be elected. What did he say? "You propose to leave us no place to appeal from their decision." That puts it all in a few words. You want an appeal here from the decision of the elected representatives of the people on the simplest and the plainest home rule proposition I can think of. You want your Court of Appeals, and you want to be able to caucus on it and say it shall not be, no matter whether they want it or not.

Now, President Schurman added considerable enlightenment to the whole subject when he picked up a book and told us we would receive that kind of home rule in New York that Washington was satisfied to give to the Philippines, a half-civilized bunch of half-dressed men that we got by accident. The Chairman of the Cities Committee added just a little bit to it also. He said the great trouble is that the Legislature does not know anything about these purely local matters. Therefore he can search the provision that they will have the power to nullify it all just

because they don't know. There is a certain distance you can go with every man, and with every set of men. A man will stand a certain amount of injury, but he will always resent insult to the last degree, and I am going to beg of the Convention not to put this insult on the people, particularly of New York. I don't know how the other cities are going to feel about it. The nullification by the Legislature of the amendment that comes from the Board of Aldermen or the Governor — or the Mayor and the Board of Estimate, may be all right, but don't tell the people, the sovereign people, the people themselves, that after they have by an overwhelming vote adopted their charter, the Legislature can nullify that. Now, that is carrying a joke just a little bit too far.

Mr. Low — Does the gentleman know that in California — it is not the Philippines, but a very progressive American state — when the people have voted on their charter, it goes to the Legislature and the Legislature has to pass upon it positively? It can either decline to accept it or it can approve it. It cannot amend, it must do one or the other. And I submit that the amendment proposed by the Cities Committee is more generous in its grant of home rule than that which the State of California gives to the cities of California.

Mr. A. E. Smith — Well, I will concede that to be the fact, and, with all due respect to the Chairman of the Cities Committee, that is no argument at all. I don't give way one whit to the Chairman of the Cities Committee in my respect for the State of California, but I would sooner be a lamp-post on Park Row than the Governor of California.

We are dealing here with the city of New York and with the State of New York, and don't let us tell the six or seven hundred thousand electors in the greater city that after they have accepted the document, that the gentleman from Owego, and Oswego, and Tioga, and Cayuga, can stand on the floor of this House and say there shall be nothing doing. Now, don't let us be ridiculous. I would love to support this home rule amendment myself. I would hate to have to tell this in any other place than in this room. Take that foolish thing out. If the people are adopting the charter, let it be their charter. Just suppose that the Legislature had the veto power over the work of this Committee here and the vote of the people. That is what it means. You elect a commission to prepare the charter; you submit it to the people; the people adopt it; and then the Legislature call a majority of this House, only one House, this House, call them in there and have a little caucus, just pass around the word that that charter don't go, the same as they did in 1911, when not one of the members saw the cover of it, when they were committed to its opposition.

The Secretary — By Mr. A. E. Smith. Page 5, line 11, strike out "shall be submitted to the legislature"; strike out lines 12 and 13 and all of line 14 excepting "there."

Mr. Unger — Mr. Chairman, I desire to say a word or two in behalf of Mr. Burkan's proposal. I sincerely trust that my friends from the country who are going to work with me and a good many of my fellow delegates from New York, to see to it that there is no infringement of popular rule, will join with us in allowing us to elect our commission to revise the city charter from the Senate districts. As Mr. Burkan has very succinctly and properly pointed out, the various interests in the city are best represented by those selected from the Senate districts. Men who come from the lower East Side certainly have different interests from those who come from Fifth avenue, and those who come from the wilds of Richmond cannot be expected to think the same way about the city of New York as those who come from that other end of the great city known as the Bronx. If we are to get a proper consensus or representative opinion, if this charter of the city of New York (which is to be its little Constitution), is to represent the real wishes of all of the city of New York, it stands to reason in fairness and justice that the commission which will draft that charter should be a commission made up of representatives of each individual little locality, representing its ideals, and opposed to this general centralized plan which two or three delegates elected from the entire borough would represent.

I sincerely trust that, inasmuch as it does not affect the welfare of the rest of the State and is just a local matter, my country friends will join with us from Manhattan and from New York city in general in seeing that the delegates who are to be on the charter commission are elected from Senate districts.

Mr. Olcott — I offer the following amendment, Mr. Chairman.

Mr. Sheehan — Mr. Chairman, I offer the following amendment.

Mr. J. L. O'Brian — Mr. Chairman, I am simply going to make the observation that I believe members should hand up any further amendments that they have to other sections of the bill because the time for the vote on the measure is only six or seven minutes off and I think everyone should have a chance to put in his amendments before that hour is reached.

Mr. Dunlap — Mr. Chairman, I offer an amendment.

Mr. Olcott — Mr. Chairman, may the clerk read the amendment I have offered?

The Secretary — By Mr. Olcott, page 4, line 26, after the word "charter" insert the words "in case the question be answered in the affirmative."

Mr. Olcott — That is to cover, Mr. Chairman and members of the Committee, the point that I make. It seems to me that we must provide that the charter commissioners shall have a duty. How is that provided? It says they may at the same time choose seven commissioners to revise the city charter and I add there so it will read "to revise the city charter in case the question be answered in the affirmative." If it is not answered in the affirmative, then they have no duties.

Mr. Low — I am willing to accept that.

Mr. Wagner — Mr. Chairman, I desire to offer a very short amendment.

The Chairman — The Clerk will read Mr. Sheehan's amendment.

The Secretary — By Mr. Sheehan. After the word "specified" line 15, page 5, insert: "if the legislature shall disapprove such revision the senate and assembly elected next after such disapproval may by joint resolution rescind the action of the legislature is disapproving such revision and in case of such rescission the revision shall thereupon take effect."

The Chairman — The Clerk will read Mr. Dunlap's amendment.

The Secretary — By Mr. Dunlap. On line 22, page 4, strike out the word "shall" and insert in place thereof the word "may."

Mr. Dunlap — May I say just a word in reference to that? It does not seem to me that every city in the State should be compelled to have an election to determine whether or not they shall revise their charter when they have no desire to do it, or in any city where they will not do it. This amendment makes it permissive so that all the cities may vote on the question if they want to, but not otherwise.

The Chairman — The Clerk will read Mr. Wagner's amendment.

The Secretary — By Mr. Wagner. Page 6, line 19, strike out the words "government of."

Mr. Low — I simply wish to say, as the time is near for voting, that all these amendments, so far as I can recall,— every amendment, including the one offered by Mr. Wagner, has been considered carefully by the Committee in the preparation of its plans. Possibly there have been verbal variations, but I think not. If there is any exception, it is the amendment offered by Mr. R. B. Smith. I do not think that the Committee took into consideration the fact that in 1917 there might come to the Legislature for action within sixty days not only amendments to charters but a great many new charters. At the same time, Mr. Chairman, I do not feel authorized, on behalf of the Committee,

to accept any of these amendments except the one offered by Mr. Olcott.

Mr. Sheehan — May I ask a question at this point? In case the people vote in favor of commissioners to revise the charter, and the work of these commissioners — taking a year or a year and a half, at large expense — is submitted to and approved by the people but subsequently vetoed or disapproved by the Legislature, did the Committee on Cities take into consideration the advisability of permitting the question to be resubmitted to a subsequent Legislature?

Mr. Low — It seems, to me, Mr. Chairman, that the situation will be fully covered by the right of amendment as given. If the charter is annulled by the Legislature and it is known that it is annulled for a particular reason, one amendment after another dealing with that particular city could be submitted by the city authorities and put into effect. It seems to me, and I think it seemed to the Committee, that any such provision is undesirable.

Mr. J. L. O'Brian — I should like to say, Mr. Chairman, as a member of the Committee, that I see no objection, personally, to the amendment offered by Mr. R. B. Smith, and I am very much in favor of it, namely, that, so far as new charters are concerned, the Legislature should have plenty of time to go over them — I mean the new charters which are to be submitted in the year 1917. His time limitation of the first day of July, I think, is entirely sufficient. I might say further, in commenting upon the question raised by the delegate, Mr. Sheehan, that the members of the Committee regarded this question of the reference of this matter of the referendum on the question of nullification by the Legislature in the nature of a check over action on the part of the city authorities and city charter revisers. All of these questions, as Mr. Low has said, have been before the Committee, considered over and over again, and our best judgment is for the bill as it now stands, except that I personally favor the amendment offered by Mr. R. B. Smith.

The Chairman — The time for debate is consumed, and under rule 27 the amendments must be voted on in order without further debate.

The first amendment is the amendment offered by Mr. R. B. Smith.

The Secretary — By Mr. R. B. Smith. On page 5, line 14, strike out the words "within sixty days" and insert "prior to the first day of July."

The Chairman — All in favor of the amendment will say Aye, opposed No. It is adopted. The amendment offered by Mr. D. Nicoll.

The Secretary — By Mr. D. Nicoll. On page 5, line 14, after the word "thereafter" insert "and by a two-thirds vote of the members elected to each branch of the Legislature."

The Chairman — All in favor will rise and remain standing until counted. Those opposed will rise. The amendment is lost. The second amendment by Mr. D. Nicoll. The clerk will read.

The Secretary — By Mr. D. Nicoll. In line 22, page 4, after the word "city" insert the words "of the first class and every other city if one-tenth its electors by petition shall so request."

The Chairman — The question is upon the amendment offered by Mr. Nicoll. All in favor will say Aye, those opposed No. The amendment is lost. The question is now upon the amendment offered by Mr. Wiggins. The clerk will read.

The Secretary — On page 4, line 21, strike out the words "unless its charter shall otherwise provide in."

The Chairman — All in favor of the amendment will say Aye, opposed No. The amendment is lost. The question occurs upon the amendment offered by Mr. Burkan. The clerk will read.

The Secretary — On page 5, line 1, strike out the word "sixteen" and substitute therefor the word "twenty-two". On page 5, line 1, strike out the words "nine of whom". On page 5, strike out lines 2, 3, 4 and 5, up to and including the word "respectively" and substitute "one of whom shall be elected in each senate district wholly or partly embraced within said city".

The Chairman — Those in favor of the amendment will rise and remain standing until counted. Be seated. Those opposed will rise. The amendment is lost. The question now is upon the amendment offered by Mr. A. E. Smith.

The Secretary — Page 5, line 11, strike out the words "be submitted to the legislature". Strike out lines 12 and 13 and all of line 14 excepting "there- ".

The Chairman — All in favor of the amendment will rise and remain standing until counted. Be seated. Those opposed will rise. The amendment is lost. The question now is upon the amendment offered by Mr. Olcott. The Clerk will read.

The Secretary — On page 4, line 26, after the word "charter" insert the words "in case the question be answered in the affirmative".

Mr. Low — I accept that amendment, Mr. Chairman.

The Chairman — The amendment is accepted by the chairman of the Committee, but must be voted on. All in favor of the amendment offered by Mr. Olcott will say Aye, opposed No. The Ayes have it and the amendment is adopted. The question now is upon the amendment offered by Mr. Sheehan. The Clerk will read.

The Secretary — After the word "specified" in line 15, page 5, insert: "If the legislature shall disapprove such revision the senate and assembly elected next after such disapproval may by joint resolution rescind the action of the legislature in disapproving such revision and in case of such rescission the revision shall thereupon take effect."

The Chairman — All in favor will say Aye, opposed No. The amendement is lost. The question now is upon the amendment offered by Mr. Dunlap.

Mr. Dunlap — Mr. Chairman, may I substitute this in place of the other?

The Chairman — Mr. Dunlap withdraws his first amendment and offers the following substitute.

The Secretary — By Mr. Dunlap. Page 4, line 22, strike out the words "shall submit" and insert "may by ordinance provide for the submission".

The Chairman — You have heard the amendment read. All in favor of this amendment will say Aye, opposed No. The amendment is lost. The question now is upon the amendment offered by Mr. Wagner. The Clerk will read.

The Secretary — Page 6, line 19, strike out the words "government of".

The Chairman — You have heard the amendment. All in favor will say Aye, opposed No. The amendment is lost.

Mr. Low — Mr. Chairman, as that disposes of the amendments, I move now the adoption of the paragraph beginning with line 20 of page 4, and ending with line 17 of page 5, as amended.

The Chairman — The question now is upon the fourth paragraph, beginning with line 20, page 4, and ending with line 17, page 5. All in favor of the adoption of this paragraph will rise and remain standing until counted. Be seated. The Chair should have stated it as "the paragraph as amended." Those opposed will rise. The Clerk will announce the result.

The Secretary — Ayes, 92; Noes, 19.

The Chairman — The sub-division is adopted.

Mr. Low — Mr. Chairman, I now move the adoption of the paragraph, lines 18 to 20, page 5.

Mr. Wickersham — Mr. Chairman, may I suggest to Mr. Low that it is now in order to move the adoption of the remainder of the section, the whole section, I mean.

Mr. Low — If that is in order, so that I can move the adoption of the remainder of the bill, I would like first to ask for a vote upon the amendment which I myself proposed, on page 7, which is intended to provide that bills received back from the mayor shall be transmitted to the Governor if the session has ended. I

should like a vote on that amendment and then I will move to accept the rest of the measure.

The Chairman — The Clerk will read the amendment proposed by Mr. Low.

The Secretary — On page 7, line 3, place a bracket after the word " or ". Page 7, line 3, before the word " if " insert the word " who ". Page 7, line 4, before the word " to " insert the words " shall immediately transmit the same ". Page 7, line 4, strike out the bracket.

The Chairman — The question is upon the amendment offered by Mr. Low to section 4. All in favor will say Aye, opposed No. The amendment is adopted.

Mr. Low — Unless there is objection, Mr. Chairman, so that a vote is desired by sections — I move the adoption of section 3 as a whole. We have adopted it by paragraphs. I move the adoption of section 3 as a whole as amended.

The Chairman — The question is upon the motion to adopt section 3 as amended. All in favor of the motion will say Aye, opposed No. The amendment is adopted.

Mr. Low — I now move the adoption of section 4, as amended. I would say that we keep the classification of cities because of its bearing on the city debt question.

The Chairman — The question is on the motion of Mr. Low to adopt section 4 as amended. All in favor of the motion will say Aye, opposed No. Section 4 is adopted.

Mr. Low — I now move the adoption of section 5.

The Chairman — The question is now upon the motion of Mr. Low to adopt section 5 of the proposed amendment. All in favor will say Aye, opposed No. The section is adopted.

Mr. Low — I now move the adoption of the measure as a whole, as amended.

The Chairman — The question is now upon the adoption of General Order No. 50 as amended. And that when the committee rises, it report its adoption and recommend to the Convention that it be adopted. All in favor of this motion will rise and remain standing until counted. Those opposed will rise. The Clerk will announce the result.

The Secretary — Ayes, 91; Noes, 17.

The Chairman — The amendment is adopted.

Mr. Wickersham — I move that the committee do now rise and report the result of the proceedings.

The Chairman — The motion is that the committee do now rise and report to the Convention. All in favor will say Aye, opposed No. The motion is carried.

(The President resumes the Chair.)

The President — The Convention will come to order.

Mr. Lindsay — The Committee of the Whole has had under consideration General Order No. 50, known as the Home Rule Bill, has adopted the same as amended, and directs me to report accordingly to the Convention, with the recommendation that it be passed as amended.

The President — The question is upon agreeing to the report of the Committee of the Whole. All in favor of agreeing to the report will say Aye, opposed No. The Ayes have it and the report is agreed to, and the proposed amendment to the Constitution is advanced to the order of third reading. The hour fixed by resolution of the Convention having arrived, the Convention stands in recess until half-past eight this evening. Whereupon, at 5:45 p. m., the Convention took a recess until 8:30 p. m., of the same day.

AFTER RECESS — 8:30 P. M.

The President — The Convention will go into Committee of the Whole in consideration of General Order No. 52, the report of the Committee on Cities — Print No. 810. Will Mr. Stanchfield take the Chair?

(Mr. Stanchfield takes the Chair.)

The Chairman — General Order No. 52.

Mr. Low — Mr. Chairman, this is print No. 810, report of the Committee on Cities, to amend Section 10 of Article 8 of the Constitution. The report is unanimous, with the possible exception of a dissent on one point by Mr. Wiggins on which no doubt he will speak himself. The object is to put the finances of the cities and the smaller civil divisions of the State on the same basis, as to serial bonds and as to bonds being issued for the life of the improvement, that we have just adopted for the State itself. I think I can explain the amendment very briefly by speaking of it for a moment, section by section. The new section, 10, is the first part of the present section 10, without change. This is made a separate section because it deals with the loaning of the city's credit. In that respect it corresponds with section 1 of Article 7 which deals with the State's credit, and the only object of it is to give it a place by itself and to dissociate it from the other matter with which it has no relation. The new section 11 is a later part of the present section 10 in regard to the debt, limit and it differs from the present section 10 substantially only in line 16 of page 3, where, instead of the words "the city of New York" we use the words "cities of the first class". If the members of the Convention will examine the amendment they will perceive that the water debt of the city of New York issued later than 1904 need not be

counted in the debt limit. The water debt issued by cities of the second class after 1908 also need not be counted in the debt limit. And the water debt of cities of the third class issued after January 1, 1910, need not be counted in the debt limit. The object of this amendment is to put the cities of Buffalo and Rochester, the other first class cities, upon the same basis as the city of New York. They are the only two cities in the State whose debt limit is computed in a way different from that of the other cities. The only question which arose in the committee was whether it was a suitable thing to date this exemption for Buffalo and Rochester back to 1904 when it took effect for the city of New York. In the case of Buffalo it would have the effect of increasing its debt limit about $9,000,000; in the case of Rochester by a little less than $5,000,000. It remains to be said that the amendment giving the privilege to the city of New York was adopted on the first of January, or went into effect on the first of January, 1906, so that, as a matter of fact, New York's debt limit was dated back two years. That, however, was accidental. It arose from the fact that it was impossible to submit the constitutional amendment, after it had been adopted by the second Legislature in 1903, until the year 1905, owing to the fact that the canal referendum came in and other amendments which postponed the vote upon it by the people. It seemed to the committee that it was a case where "the letter killeth and the spirit giveth life". There appeared to be no substantial reason, to the majority of the committee, that is to anyone, all except Mr. Wiggins, I think, why Rochester and Buffalo should not be placed in this respect on the same plane as the city of New York.

When we come to section 12 the only other amendment in section 11, is the omission of some words in brackets on page 3, from line 3 to line 9, which are omitted in order to give effect to the inclusion of Buffalo and Rochester in the provision below. In other respects, the article is exactly as it is in the present Constitution. We were urged to rewrite the article, and I think it could have been improved in form, but it has been the subject of a great deal of judicial interpretation; I think, in a single instance some thirty-seven questions were submitted by consent to the court and passed upon, and under those circumstances it appeared to the committee better to leave it as it is with all its crudeness than to try to put it into better shape and then to have it reinterpreted. Now, when we come to section 12, beginning with line 16, on page 5, we provide that any county, city, town, village or other civil division of the State shall be put upon the same basis as to serial bonds as has been adopted for State finances. We have taken the words literally from the amendment

adopted in relation to the State, except that we have had to make this exception for the city of New York. Beginning with line 24 — 25, I suppose it is — of page 5, after providing that the serial bonds shall be paid of so much a year for a period not longer than fifty years, we say " except that nothing in this article shall be so construed as to prohibit the issuance by the city of New York of bonds with a sinking fund for their redemption, to be created in whole or in part out of the earnings from any public improvement owned or to be owned by the city." Those who are familiar with the city of New York will understand that it was necessary to make that exception on account of the dual subway contracts which call for such sinking funds and which will be met, it is hoped, out of the earnings of the road, as soon as the road has been some time in operation. I think the amendment would also apply to dock bonds and to water bonds, which are self-supporting. There appears to be no reason why that should not be so. The difference between a serial bond and these fifty-year bonds with the sinking fund, Mr. Chairman, is the difference of taxation of one per cent. a year. A sinking fund of one per cent., calculated at four per cent., will pay off a fifty-year bond, if I recall, in forty-one or forty-two years, and all of these contracts call for the setting aside of one per cent. for the sinking fund. On the other hand, if you issue a fifty-year serial bond, and pay one-fiftieth each year, you must pay off two per cent. a year. Of course, in the long run the city saves money. But it does add to the burden of present taxation. And with the city of New York in the condition in which it now is, no one, I think, wants to increase the burden of its present taxation; and yet, I call attention to the fact that outside of these self-supporting bonds, if the city of New York does want to borrow money it must pay two per cent. through its tax levy instead of one. We feel in regard to that just as I think the Finance Committee of the State felt. Whatever the burden, it is a discouragement to borrowing money, and in the present state of municipal indebtedness all over the State, we think that is a good thing rather than a hardship. I would like to say for myself that I offered in committee to make that exception general, so that it would apply either to all the cities of the first class or to all the cities of the State, but the representatives of other cities in the committee preferred to have it as it is. I speak of that now because if the cities come up later and ask for a Constitutional Amendment to put them on the basis of New York, I would like to have it on the record so far as I am able to speak for the city of New York, that I offered to place them now on the same basis as New York city.

We have used the language on line 7 of page 6 that occurs in the State article. "Until the Legislature shall enact such a general law the probable life of the work or object for which the debt is to be contracted shall be certified by the State Engineer, whose certificate shall be conclusive, and no such debt shall be contracted until such certificate has been filed with the officer whose duty it is by law to issue the evidences of such indebtedness." I ought to have said that the State provision which we have copied terminates on line 11, to the effect that the probable life of the object is to be determined by the general law of the State; and we took it for granted, inasmuch as this language is identical with that in the State Finance article, that when the Legislature does enact such a law it will enact it in the same terms for the State and all its civil divisions; but as it is impossible to know how quickly the Legislature will pass that law; and as there are many cities in the State some of whose needs may be urgent, we have provided that until the Legislature enacts such a general law "the probable life of the work or object should be certified by the State Engineer," whose certificate shall be conclusive. The reason why we use the State Engineer for that purpose is that this amendment applies to counties, cities, villages and any civil division of the State, a lighting district, or what-not, and it is impossible to find any local officer who is to be found in all of the units, and therefore we took the State Engineer as a person who would represent for a short time all of the civil divisions; but we anticipate that the general law of the Legislature will be quickly passed and will make the use of the State Engineer purely temporary, if he is called upon to act at all. We then go on to make the same provision for the exchange of serial bonds of cities and other civil divisions, in the place of outstanding bonds with sinking funds, which occurs in the State Finance article, except that we have to leave that to the proper authorities of the county, city, town, village or what-not, because they are the only ones who are familiar enough with the details to know upon what basis such an exchange can be made.

I want to offer a proposed amendment at that point, which I will return to in a moment, because the words that we use were taken from an intermediate copy of the State finances article and it is necessary to put in words to the effect that the determination of such authorities as to comparative costs shall be conclusive. I will offer that amendment when we reach it. Then, Mr. Chairman, we found in examining the reports that we received from the various cities of the State, from which we asked information as to their finances, that in some instances — in one instance, I think, debts have been refunded nine times; in another six times;

in another four times — awakening the idea, at least, that there has been no effort to pay off such debt, and that it has been renewed as often as it fell due. Beginning, therefore, with line 4 on page 7, your Committee proposes that these "civil divisions of the State shall annually provide out of the proceeds of taxation or other current revenues for the payment of interest upon and instalments of principal of all debts as the same shall fall due, and for the contribution to all of the sinking funds heretofore created pursuant to law of the amounts necessary with the accumulations thereon and additions thereto to pay the principal of the debts for which said sinking funds were created. No debt of any such county, city, town, village or other civil division of the State now existing or hereafter created, shall be refunded except by the substitution of serial bonds for bonds for which a sinking fund has been provided in accordance with the provisions of this section, and except further that debts now existing incurred for the acquisition of property or the making of improvement of permanent character not payable in instalments and for which a sinking fund has not been provided may be refunded by the issue of serial bonds payable within twenty years from the date of such refunding bonds." Then the following sections of article VIII are to be renumbered accordingly.

Mr. Chairman, I immediately sent copies of this amendment to the mayor of every city in the State and asked for a report upon it from him or from the comptroller. From the mayor of Troy I received this letter, which I may not read in full, but after saying this amendment is very similar to the law affecting second class cities, he says: "This law has worked very satisfactorily in this city (Troy) and I doubt very much if the Constitutional Convention can improve on the proposed amendment. I believe the proposed amendment will work well and will be generally satisfactory." The comptroller of Syracuse raised one or two technical questions, the only important one of which related to the decision of the State Engineer. As I have already pointed out, that is purely temporary and will not be in effect long, if at all. The comptroller of Schenectady thinks that, in the event of refunding with serial bonds, they should have run forty years instead of twenty years. Mr. Prendergast, comptroller of the city of New York, writes: "I have reviewed the article very carefully and have no further suggestions to make. I think it is in very good form. I think more and more limiting issues of bonds to those of serial character is very much in the public interest as far as general work is concerned, because I am sure it is going to have a deterrent effect upon expenditures. At the same time, I have not changed my views, but there are

occasions when a departure from this policy may be in the public interest. I think you have endeavored to provide for that as fully as you could in the proposed amendment." His views were that perhaps it was wiser to leave the cities as well as the State the privilege of issuing whatever bonds were best adapted to the market. But we have felt, as a Committee on State finances felt, that at this particular time, when there is such a heavy burden of municipal indebtedness, to insist upon serial bonds is not a very heavy burden and we can very well adopt that policy for cities and other civil divisions of the State as well as for the State itself. The mayor of Albany says he has taken the amendments up with Mr. John M. Foll, the city comptroller, and writes: "We believe the matters treated in the proposals should be left to each city to determine. If, however, the Convention is to do anything in this connection, we consider serials the proper thing. The matter of determining the probable life of those should be locally determined instead of by the State Engineer." I have already explained why we left it to the State Engineer, which is because there is no officer common to all these various civil divisions of the State. With that explanation, Mr. Chairman, I move the adoption of section 10 in the article as proposed.

The Chairman — Is there any objection?

Mr. Unger — Have you been advised by any one who is competent, any financial authority, as to the effect of the adoption of this proposal upon outstanding sinking fund bonds and their value?

Mr. Low — I do not think that that question has been particularly discussed. It is hardly more likely to have any different effect as to cities, I should think, than in the case of the State itself, and I think the policy was universally approved there by the financiers.

Mr. Unger — I did not know. I merely wanted to find out whether you had discussed that phase.

The Chairman — If there is no objection, the question before the Committee is the adoption of section 10 of the proposed amendment.

Mr. Cullinan — A question. Page 6, lines 7 and 8: "Until the Legislature shall enact such a general law the probable life of the work or object for which a debt is to be contracted shall be certified by the State Engineer." Has the Committee on Cities taken into consideration —

The Chairman (interrupting) — That question at the present time is out of order. The question before the Committee is upon the adoption of section 10. The question of the gentleman from Oswego has to do with section 12. All those in favor of the

adoption of section 10 will signify by saying Aye. Contrary-minded. The Ayes have it. Carried.

Mr. Low — I now move the adoption of section 11, which appears in the amendment.

The Chairman — All those in favor of the adoption of section 11 will signify by saying Aye. Contrary-minded. It is carried.

Mr. Low — I would then move, Mr. Chairman, first, the following amendment to section 12 —

The Chairman — Before you move that amendment, will you yield the floor to Mr. Cullinan who desires to address an inquiry to you?

Mr. Cullinan — Possibly the Chairman in discussing section 12 will answer my question, inasmuch as he speaks about an amendment.

Mr. Low — I think not.

Mr. Cullinan — Very well. Has your Committee taken into consideration that perhaps there may not be such an officer called the State Engineer?

Mr. Low — No, Mr. Chairman, I don't think that we considered that. I suppose, if a change were made, that the Committee on Revision could put the corresponding official in that place. I think it would have to be made in some such way.

The Chairman — Will the Chairman of the Cities Committee send his proposed amendment to the desk?

Mr. Marshall — The present title, under the Constitution, of the individual called the State Engineer is "State Engineer and Surveyor." I think that correction should be made. I move that, after the word "Engineer" in line 10, page 6, there be added the words "and Surveyor."

The Chairman — Is the Committee ready for the question upon Mr. Marshall's amendment, which is to add the words "and Surveyor" after the word "Engineer" at the beginning of line 10? All those in favor will signify by saying Aye. Contrary. It is carried and the amendment is adopted.

Mr. Austin — After Mayor Low has his amendment prepared I want to call attention to one or two things.

Mr. Low — Mr. Chairman, I want to propose on page 6, line 17, before the word "authorities" to insert the word "appropriate"; and in line 21, after the word "debt" insert the words "The determination of such authorities as to such comparative costs shall be conclusive". That amendment was made in answer to a criticism, by the State Finance Committee, and so I propose to insert it here.

The Chairman — The Clerk will read the amendment for the information of the committee.

The Secretary — By Mr. Low, page 6, line 17, after the word "the" insert the word "appropriate". Line 21, after the word "debt" insert the words "The determination of such authorities as to such comparative costs shall be conclusive".

The Chairman — Does the gentleman from Greene desire to be heard with reference to that amendment?

Mr. Austin — While I recognize that this section is intended to follow absolutely the provisions of the finance amendment with reference to the issue of serial bonds by the State, in so far as it may be applicable to civil divisions of the State, it seems to me that in one or two cases it does not exactly follow that wording and that in one or two places it is somewhat ambiguous. I first wish to call attention to the first eight lines of section 12: "All debts not payable out of the proceeds of annual taxation or other current revenues hereafter contracted", etc., shall be paid by serial bonds. Now it is my understanding that the Cities Committee intended to remove from the serial bond provisions temporary debts contracted in anticipation of the receipt of taxes or revenue. Practically speaking, all debts of any civil division of the State are payable out of the proceeds of annual taxation or other revenues. Therefore the section, taken literally, would exclude every debt which a city contracts. I therefore shall offer, among other amendments, the following: To strike out on page 5, line 16, all after the word "debts", and, on line 17, strike out all up to and including the word "revenues" and to insert in place thereof the following: "except temporary debts contracted in anticipation of the receipt of taxes or other revenues." I think that should go in there to make the meaning clear.

The Chairman — Will the gentleman submit that amendment to the desk?

Mr. Austin — Certainly.

Mr. Low — Section 10 — what we have already approved as Section 11, this section reads "This section shall not be construed to prevent the issuing of certificates of indebtedness or revenue bonds issued in anticipation of the collection of taxes for amounts actually contained, or to be contained in the taxes for the year when such certificates or revenue bonds are issued and payable out of such taxes; nor to prevent the city of New York from issuing bonds to be redeemed out of the tax levy for the year next succeeding the year of their issue, provided that the amount of such bonds which may be issued in any one year in excess of the limitation herein contained shall not exceed one-tenth of one per centum of the assessed valuation of the real estate of said city subject to taxation."

Mr. Austin — I understand that, Mr. Chairman, but it seems clear to me that when you say "all debts not payable out of the

proceeds of annual taxation or other revenues", you have excluded absolutely nothing. All debts are paid out of annual taxation or current revenues, and therefore your exception should apply to temporary indebtedness contracted in anticipation of the receipt of taxes or other levy. Now, Mr. Low has moved to insert before the word "authorities" in line 17, page 6, the word "appropriate". Now it does not seem to me that that is the word to use there, and I offer the amendment, to insert before the word "authorities" the word "legislative"—legislative authorities. That is the term used in the home rule amendment throughout and I think it should be uniform in this provision. I had also noticed the omission to which attention was called by Mayor Low to the effect that the determination as to comparative cost should be conclusive. Of course, if the word "authorities" is to be preceded by the word "legislative", then that amendment should read, "the determination of such legislative authorities" as to such comparative cost shall be conclusive. I am, therefore, offering that amendment, which should not be offered at all unless the word "legislative" is inserted before the word "authorities." Now upon page 7 where the Committee had endeavored to fix the amounts which shall be contributed to the sinking fund, they have fallen into — the Committee has fallen into the same error which the Committee on Finance fell into several times, by omitting to include the fund itself as a basis upon which you should determine the contributions and the accumulations, and after a great deal of careful thought the Committee on Finance formulated what seemed to be impregnable language on that subject, and it seems to me it should be incorporated in this amendment, word for word. I shall, therefore, offer an amendment which would strike out on page 7, lines 9 and 10, and the words on line 11 down to the word "created", and insert the following which would make the language read: "And for the contribution to all of the sinking funds heretofore created pursuant to law"— and here is the change — "which, if thereafter annually contributed to each such fund would with the fund and with the accumulations thereon and the contributions thereto, computed at the rate of three per cent. per annum produce at the date of maturity the amount of the debt to retire which such fund was created." Now, those are the exact words of the Finance Committee amendment. They afford a scientific basis for determining the amount which should be contributed annually, and it seems to me that the same language should be followed in the cities provision.

The Chairman — Will the gentleman send his amendment to the desk?

Mr. Austin — Just one other change — I have prepared no amendment, but I wish to call it to the attention of the chairman of the Committee. And first, may I ask him a question? Is it intended to provide that all refunding bonds shall be limited as to their maturity to twenty years?

Mr. Low — That was the intent.

Mr. Austin — Well, it seemed to me, then, that you should eliminate from line 17, on page 5, the words "or refunded". Because there you say that all debts hereafter created or refunded shall be payable not more than one year — not less than one year nor more than fifty years thereafter, while in another place you attempt to limit the issue of refunding bonds to twenty years, and in that connection may I say it seems to me the language of that sentence, beginning with line 11, page 7, is somewhat involved by virtue of the exceptions therein, and it would be much simpler to use plain and unmistakable language, at least such as seems plain and unmistakable to me — something like this: "All bonds issued to refund an existing debt of any county, city, town, village or other civil division of the State, shall be payable in equal annual instalments, the last of which shall be payable within twenty years from the date of such refunding bond." Then you have no exception to bother you, and I understand it was the determination of the Committee that all refunding bonds should be limited to twenty years maturity.

The Chairman — Is that offered in the form of an amendment?

Mr. Austin — Yes, I will offer that in the form of an amendment.

The Chairman — Will you please send it to the desk?

Mr. Low — I think most of those amendments I should be willing to accept for the Committee. The probability is that we have used a different language because we probably had an earlier draft of the State Finance Committee's action before us. But I would like to pass on each one as it is brought up for action.

The Chairman — Are there any other further amendments to be offered to the section?

Mr. Barrett — I would like to ask Mr. Low a question in regard to the same sentence, page 7, beginning on line 11, "No debt of any such county, city, town, village or other civil division of the state now existing or hereafter created shall be refunded, except by the substitution of serial bonds". Is that intended to include temporary certificates of indebtedness issued to be payable out of the collection of assessments?

Mr. Low — No, I think not, Mr. Chairman. It is simply to deal with bonds which have been refunded over and over again, for which no sinking fund has been provided.

Mr. Barrett — One more question. Without further explanation, would it have to be included under the description of a debt by city, county, town, or village?

Mr. Low — I suppose Mr. Austin's first amendment might cure that.

Mr. Barrett — Mr. Austin's first amendment cures the same thing, or was intended to in an earlier part of the article. His amendment in that particular did not refer to these three lines.

Mr. Lindsay — Mr. Chairman, I desire to offer an amendment and call the attention of the Committee to a matter which seems to be creating some trouble. In line 21, page 5, it states that these bonds shall be paid in equal annual instalments. Now, if you are selling to a bond purchaser, you will say your authority for each bond is to issue in equal annual instalments, that they should be that way. In paving a street, for instance, you are authorized to issue bonds for the amount of certain expenses. It may be an odd number, $67,500; but you cannot very well issue that in equal annual instalments. You must make a variation somewhere in that amount, or have your bonds in odd parts. It seems to me, to avoid the question, that that should be made more flexible, and that it will be sufficient, and I have offered an amendment to that effect, to insert after the word "in" and before "equal annual instalments" the word "substantially".

Mr. Low — There would be no objection to that, Mr. Chairman.

The Chairman — The Chair understands that amendment, Mr. Lindsay, is accepted by the Chairman of the Committee.

Mr. Low — Yes, sir.

Mr. Barrett — Mr. Chairman, I offer this amendment.

The Chairman — The Secretary will read the amendment of Mr. Barrett of Westchester.

The Secretary — On page 7, line 12, after the word "state" insert "except temporary certificates of indebtedness".

Mr. Austin — Mr. Chairman, I think that is a pretty dangerous exception, because it leads to the conclusion that you may refund temporary indebtedness contracted in anticipation of the receipt of revenues and taxes. I doubt very much whether such an exception should go in this provision. I don't think it is at all customary.

Mr. Stimson — Mr. Chairman, may we have that read again.

The Chairman — The Clerk will read the amendment of Mr. Barrett of Westchester again for the information of the committee.

The Secretary — On page 7, line 12, after the word "state" insert "except temporary certificates of indebtedness."

Mr. Austin — As I said before, I think that would carry with it the necessary imputation that it was proper to refund temporary indebtedness. I certainly do not think the committee wants to permit that, nor do I think it is at all customary to refund temporary indebtedness.

Mr. Low — I shall be unable to accept it, because I do not think it was our intention that certificates should be refunded.

The Chairman — It would save time to leave debate on that amendment until it is reached in its order. The question now before the House is upon the adoption of the amendment by Mr. Low. All in favor will signify by saying Aye.

Delegates — What amendment?

The Chairman — On the amendment by Mr. Low, of New York.

Mr. Low — Mr. Austin moved that instead of the word "appropriate" we use the word "legislative".

The Chairman — We will take it up in its order.

The present motion is upon the amendment introduced by the gentleman from New York, the Chairman of the Cities Committee. All those in favor will signify by saying Aye, contrary-minded No. It is carried.

The Secretary will read the second amendment offered by Mr. Low of New York.

The Secretary — On line 21, after the word "debt", insert the words "the determination of such authorities as to such comparative cost shall be conclusive."

Mr. Stimson — Does the Chairman of the Cities Committee accept the amendment which I understand Mr. Austin offered that it is to be legislative authority?

Mr. Low — I do, Mr. Chairman, if that covers the necessities of the case. There are legislative authorities of a county, a city, a town, and I suppose of a village — there are not of school districts and lighting districts.

The Chairman — The Chair understands that the Chairman of the Cities Committee accepts the word "legislative" in place of the word "appropriate". Am I right?

Mr. Low — Mr. Sanders, a member of the committee, thinks it is imprudent.

The Chairman — The question is upon the amendment of Mr. Low, who offers the word "appropriate".

Mr. Marshall — Mr. Chairman, the phrase "legislative authorities" is not used in the Cities Article on which we passed this afternoon. There the phrase is "legislative bodies" so I think Mr. Low's suggestion of the word "appropriate" is better.

Mr. Austin — You are quite right. I find that is the term used there.

Mr. Mereness — Mr. Chairman, what is to be done with a bond issue of a village or a school district? There is no Legislature in a village, is there? There is the board of trustees.

Mr. Low — I understand, Mr. Chairman, that Mr. Austin concedes that the word proposed by the Committee "appropriate" is the right word.

The Chairman — Let the Chair state for the information of the Committee just the status of the present proceeding. The Committee has already voted to incorporate the word "appropriate" suggested by Mr. Low —

Mr. Austin — If that is right, Mr. Chairman, I will withdraw my two amendments.

The Chairman — Well, that saves that much time. Mr. Austin withdraws his amendments one and two.

The question now before the Committee is on the second amendment by Mr. Low, which the clerk will read.

The Secretary — Page 6, line 21, insert after the word "debt" the words "the determination of such authorities as to such comparative costs shall be conclusive".

The Chairman —All those in favor of the adoption of the amendment just read will signify by saying Aye, those opposed No. It is carried.

The clerk will read the first amendment offered by Mr. Austin.

The Secretary — On page 6, line 17, after the word "the" insert the word "legislative".

Mr. Low — That, Mr. Chairman, has been disposed of.

The Chairman — Yes; that is wrong. The second and third amendments by Mr. Austin are withdrawn. The two amendments applying to Mr. Low's amendment are withdrawn. The clerk will read the amendment by Mr. Austin.

The Secretary — Page 5, line 16, strike out all after the word "debts"; line 17, page 5, strike out all to and including the word "revenue". Insert in place thereof, "except temporary debts contracted in anticipation of the receipt of taxes or other revenues".

Mr. Low — Mr. Chairman, how will the language read then, with that change?

The clerk will now read the amendment.

The Secretary —All debts except temporary debts contracted in anticipation of receipt of taxes or other revenue hereafter contracted or refunded by any county, city, town, village or other civil division of the State, pursuant to an authorization therefor heretofore or thereafter made."

Mr. Low — That is enough, Mr. Chairman.

The Chairman — The Chair understands that the amendment is accepted by the Chairman of the Cities Committee.

Mr. Sanders — Mr. Chairman, I doubt very much the advisability of accepting that amendment for the reason that the word "debt" is very broad. "Debt" includes the liability incurred at the time of making of a contract, which is payable out of the year's revenue, taxes or otherwise and it is not intended to provide that a debt of that kind must be spread over a period of twenty or thirty years. It seems to me that the language as originally incorporated in this proposal covers the situation.

Mr. Austin — Will Mr. Sanders kindly tell me what debt is not payable out of proceeds of "taxation or other revenue"?

Mr. Sanders — Mr. Austin in asking that question leaves out the word "current" and possibly the word "current" should be inserted before the word "taxation" — Mr. Low suggests "current annual taxation, or other current revenue." That would cover every indebtedness that is payable out of current revenue of the cities.

The Chairman — The question before the House is now upon the adoption of the amendment as read. All in favor will say Aye, contrary No. The amendment is lost.

Mr. Low — Mr. Chairman, I move the insertion of the word "current" on page 5, line 16, so that it will read "All debts not payable out of the proceeds of current annual taxation or other annual revenue".

Mr. Stimson — Mr. Chairman, we went into that matter pretty carefully in comparison with all the provisions we could find relating to the two different classes of debts, debts which were contracted either in anticipation of the receipt of taxes or other revenues form one class. All other debts form another class, and I sincerely believe that the amendment offered by Mr. Austin represents the true definition of those two different classes of debts which are uniformly recognized. I have not had opportunity to consult with the Chairman but I strongly believe that Mr. Austin's criticism is well taken and that the Committee should except here debts which are contracted merely in anticipation of the receipt of revenue, those representing a class of debts which occur in all government operations where for some reasons or other it is necessary to borrow money for the current expenses of government before the taxes applicable to that purpose are received and the regular and uniformly used term is that they are contracted in anticipation of the receipt of revenue.

The Chairman — Well, the Chair is unable to afford the gentleman from New York any redress because of the fact that the amendment of which he is speaking has already been lost.

Mr. Stimson — I am going to ask if the Chairman will not move the reconsideration of that vote.

Mr. Leggett — How would it do to change those words — and I want to ask this of the committee — and say "The proceeds from taxation or other revenues for the current year"?

Mr. Low — That would be a very good amendment.

Mr. Stimson — How would that strike you, Mr. Austin?

Mr. Austin — It still leaves the objection that at least a part of these debts are payable from the taxes or revenues of the current year.

Mr. Stimson — That is what I say "Proceeds from taxation or revenues, or other proceeds for the current year".

Mr. Parsons — Would not the last sentence of Section 12 require the general fund bonds of the city of New York to be serial bonds? I refer to the bonds in which the excess sinking fund revenues are invested.

Mr. Low — It is possible, I am not sure.

Mr. Parsons — Does not the gentleman think, then, that there should be an amendment so that it is perfectly clear that it would not apply to such general fund bonds?

Mr. Low — Mr. Chairman, I am very glad to move to reconsider the vote on the amendment. It was the intention of the Cities Committee to put our proposition on all-fours with the proposition of the State, and whatever is satisfactory there I think ought to be satisfactory here.

The Chairman — The gentleman from New York moves for a reconsideration of the vote by which the amendment offered by Mr. Austin was declared by the Chair to be lost. All in favor of the reconsideration will signify by saying Aye, contrary No. It is carried. The amendment is now before the committee and the Clerk will read for the information of the committee.

Mr. Low — Will you please see, Mr. Stimson, if that amendment of Mr. Austin's is exactly what you would propose?

The Secretary — On page 5, line 16, strike out all after the word "debts" and on the same page, line 17, strike out all up to and including the word "revenue". Insert in the place thereof the following: "Except temporary debts contracted in anticipation of the receipt of taxes or other revenues."

Mr. Leggett — For the current year?

The Chairman — Add to that, Mr. Clerk, "for the current year." Mr. Austin, they are adding to your amendment "for the current year". Is there any objection?

Mr. Austin — Only the objection that I think is the one Mr. Tuck has called to my attention, stating that it is the practice in his city of Rochester to borrow in anticipation of the sale of bonds. That apparently would not be covered by this amendment. I think "other revenues" would cover it.

Mr. Stimson — Mr. Chairman, it certainly cannot be the practice to issue temporary bonds until permanent bonds have been authorized?

Mr. Tuck — Mr. Chairman, if I may answer that, on the point I had in mind, by saying the practice of borrowing on short term notes which of course is a debt on the city, as the work advances and before it is advisable to issue the bonds. Those notes are refunded out of the proceeds of the bonds.

Mr. Stimson — Certainly that practice does not obtain and those bonds are not issued until the debt has been authorized?

Mr. Tuck — The debt is authorized, certainly.

Mr. Stimson — Then I think it unnecessary to cover it by any expedient because it would be covered by the regular authority for the debt.

Mr. Wickersham — Mr. Chairman, clearly there would be a refunding operation there. There would be the issue of these temporary notes and considerably later the permanent bonds, and that would not be covered by this provision.

Mr. Stimson — Mr. Chairman, I should think that so far as the constitutional provision was concerned — giving authority for the issue of the permanent bonds would be all that is necessary, and the question of issuing temporary bonds until the issue of permanent bonds might well be left to subsequent legislation since they cannot be issued until the debt itself is authorized.

Mr. Wickersham — Of course, that is true, unless you exclude that by the Constitution and what I am afraid of is that you exclude it.

The Chairman — The question before the committee is the adoption of the amendment.

Mr. Wickersham — It seems to me you are dealing with pretty ticklish ground here, and there is nothing more ticklish than language authorizing bond issues. We ought to get this right, otherwise we will be in quite a plight over it.

Mr. Low — Mr. Chairman, I remember that the Comptroller of the City of Rochester, Mr. Osborne, when he appeared before the Cities Committee, spoke of the matters to which Mr. Tuck has referred. It is authorized by the charter of Rochester. I sent to Mr. Osborne a copy of this article for his criticism. And I have heard no criticism from him. It may be because he is away that he has not been heard from.

Mr. Stimson, have you got your amendment as you would like to have it?

The Chairman — The Chair suggests that if this amendment is reduced to a question of the language, it ought to be referred to the linguistic expert of this Convention, Mr. Marshall of New York.

Mr. Marshall — Mr. Chairman, this is a subject which is more than a matter of words or language; it is a matter of very great consequence, involving the finances and perhaps the credit of the city. It is not a matter which can be disposed of advantageously in Committee of the Whole. I really think it ought to be referred back to the Cities Committee, with the request that they reconsider this section and report it, perhaps on Wednesday — tomorrow, or, rather, on Thursday; this measure keeping its place as Special Order. I think it is of sufficient importance to carefully weigh the effect of this language.

Mr. Wickersham — Mr. Chairman, I quite agree that possibly it may simply be laid aside until the next order — they may be able to arrange it. It strikes me it is far too important to risk adjusting out here in Committee of the Whole.

The Chairman — Does the gentleman from New York move to postpone?

Mr. Wickesham — I move that we rise, report progress and ask leave to sit again, after the disposition of the next Special Order.

Mr. Parsons — Mr. Chairman, will you withdraw that motion for a moment, while I offer this amendment? I offer the following amendment to be inserted after the word "city" in line 3 of page 6. The amendment then reads: "or of general fund bonds for the investment in the excess of sinking fund revenues or income over the amount required for redemption at maturity for the indebtedness secured by the sinking fund".

The Chairman — Will the gentleman from New York send his amendment to the desk?

Mr. Parsons — I will say that that amendment is to meet a situation peculiar in New York. The sinking fund revenues, established many years ago, today are far in excess of the amounts needed to retire the bonds at maturity, and during the administration of Mr. Low, a scheme was worked out by which these excess revenues were invested in general fund bonds. This general fund bond scheme was created so that the revenues could be invested in those bonds, but really used for current expenses, the bonds remaining as an obligation of the city so that they could be sold at any time if necessary. Now, this is very largely a fiction. It was a scheme that had to be worked out so that the city could utilize for current purposes these excess sinking fund revenues, and it is of course unnecessary that those bonds should be made sinking fund bonds. I have suggested to this Committee, and the fact should be gone over carefully, that the situation should be taken care of by the Committee on Cities.

Mr. Low — Mr. Chairman, if this section is referred back to the Committee and we may have the benefit of the amendments

that have been offered, I will be glad to ask Mr. Stimson and Mr. Austin to sit with the other members of the Committee, and I think we can bring it back at the end of the evening.

Mr. Wickersham — Mr. Chairman, I understand we are in the calendar of General Orders, and therefore my motion would be that this order be temporarily laid aside, to be taken up after the next Special Order, and that when the Committee arise, it report progress, and in the meantime, have up the next Special Order.

The Chairman — All in favor of that motion will signify by saying Aye, contrary No. It is carried. The next pending number on the calendar is General Order No. 27. The Chair recognizes Mr. C. H. Young, of Westchester, with great pleasure.

Mr. C. H. Young — Mr. Chairman, the proposition which is submitted for the consideration of the Convention is contained in these words:

"After January first, one thousand nine hundred and eighteen, no person shall become entitled to vote by attaining majority, by naturalization or otherwise unless such person is also able, except for physical disability, to read and write English. Suitable laws shall be passed by the Legislature to enforce this provision." You will notice, in the language of the act, that there is no attempt made to disqualify any person who has a right to vote at this time. You will also notice that there is no attempt to deprive any person of the right to vote who may acquire that right through naturalization or attaining his majority at any time before the first day of January, 1918.

There are in the United States at the present time nineteen states having qualifications of similar character. They all relate in common to the use of the English language, except one, and that is the State of Louisiana. That is the only State in the United States that has a qualification with respect to any other language than the English language, and that qualification is "the mother-tongue." So that in eighteen States of the Union at the present time there is such a provision as this. Not one of those provisions, however, was held off in its effect for two years or two and a half years. All of them went into effect immediately after they were passed, either in the Constitutions of the states or by the Legislature of the states. This is the first proposed test in the United States that gives to the people an opportunity to acquire the English language and a reasonable time in which to bring about that result. In many of these states the qualification has disqualified voters who already had the right to vote in those states. In others it only disqualified those who acquired that right some months after the time that the law was

passed. In none of them is there any such requirement as this. I particularly want to emphasize that, at this time, none of those states have a qualification calling for the ability to read and write any language other than the English language, except the State of Louisiana. I will call your attention to that feature a little further on in this discussion.

Mr. Chairman and Gentlemen: The mandate of the people which called this Convention into being is not of sufficient strength to justify the belief that the majority of the people of this State desire many changes in our present organic law. This being so, the burden of proof seems to be more heavily placed than usual upon the proposer of any changes. In my opinion, because we must assume this burden, there is every reason why we should attempt to lead the people rather than follow them, and any proposal, therefore, that is right, that will make for the betterment of the government, we should urge upon the people whether they disagree with us for the moment or not. We should try to educate the voters. In our early pioneer days a literacy test would have worked a real injury to our free and independent government when very many pioneers and emigrants of strong character and great native ability had no advantages of schooling. But this is no longer so. Educational advantages are to-day open to everyone with a desire for knowledge, and with ordinary energy and ability any one can secure such education as will permit him to read and write English, and this is particularly true of those who can already read or write their own language before they land upon our shores. If we take the strong position, that we should lead and not follow public opinion, our work will more strongly recommend itself to our voters than if we attempt to place on the Legislature those burdens we fear to assume ourselves. I have seen, during the progress of this Convention, indications of a disposition to delegate to the Legislature powers which we fear to exercise ourselves. Considering the whims and caprices of the people, we should hardly expect the Legislature to accomplish that which we fear to recommend. If the people do not look to us to guide them, whom should they trust? But I propose in the matter in hand, in spite of the view I have expressed, to endeavor to show: First, that the proposal is right; second, that it is expedient. Historically, I might say that like proposals were introduced in the Convention of 1894, which proposals, however, were harder upon the illiterate than the proposal suggested by me, and which were not acted upon by the Convention, although favorably reported. Bear in mind that at that time, there were but three or four states in the Union having a literacy test. If my recollection serves me right, they were Massachusetts, Colorado, Wyoming and Maine.

Since the Convention of 1894, the flood of immigration to this country has increased beyond belief, and, so far as this State is concerned, adult illiteracy has grown with the increase of population. Since that time Congress has also undertaken to restrict immigration with a literacy qualification. Very properly, President Taft vetoed the legislation. It would be as manifestly absurd to keep any man out of the United States because of his lack of knowledge of our institutions, as it is manifestly proper that he should not enjoy the privilege of voting to help govern the country, until he is instructed in the English language and can thus become acquainted with the spirit of our institutions. The Federal statute contained twelve or more other limitations and Secretary Nagle's report to the President refers to them particularly and shows the confusion that would arise in administering that law because of its complications, rather than because of the literacy clause in it. That act did not provide for citizenship or the right to vote. It provided only for the right to land in this country.

At the present moment the thought of this Convention is directed largely to the shortening of the ballot. Why? Because it is claimed that the voters have not enough knowledge of candidates' qualifications to select and choose all the public officers now elected by them on a blanket ballot. If this be true, the most elementary education would be a step toward making the voters informed enough to understand what they are doing. I have one firm belief which is, that education should be started from the bottom, and that knowledge of the English language is the first essential to intelligent voting. I am not one of those who have ever believed in the property qualification for voters. I have never believed in an aristocracy of money as a test for voting. In these troublous times there seems to me to be no greater duty upon the people of the State of New York than the duty of making our foreign born population acquainted with American institutions and thus giving them at least an opportunity to acquire patriotism from knowledge of our history and government. They cannot acquire that knowledge without being able to read and write the English language. We have wisely opened the gates to foreign born citizens. We have welcomed them with open arms. They have been absolutely necessary to the advancement of our civilization. We have furnished them with free education, day and night, as no other country has. The slight restrictions upon their coming into this country have worked no appreciable harm, but because of this, does it follow that we should neglect our duty in fitting them to become intelligent citizens before they acquire the privilege of voting?

Especially is this necessity apparent at this moment. When the war in Europe ceases, we may reasonably expect a greater flood of immigration than ever before in its history. At such periods we have hitherto had such results. Money will be a scarce commodity in European countries, no matter what the outcome, and the field of opportunity will appear to impoverished peasants and foreign wage earners to be in America. If the present monetary condition exists in America, this influx will be harder to assimilate than it would be in times of prosperity. If this great body should become American citizens and entitled to vote without an educational qualification a more dangerous condition would arise in this country than has been the case in times past. We are on the eve of an election which may produce 189,000 more illiterate voters, making a total of 360,000 in this State, provided woman suffrage prevails in the coming election.

It seems to me that no more important duty lies before this Convention than the duty of providing a voting citizenship in the future which shall at least have the opportunity of becoming intellectually capable of understanding our government, history and traditions and carrying that knowledge into their ballot. It is true that a mere knowledge of English will not of itself produce patriotism, or necessarily much more capable or intelligent voting. The best evidence of that lies in the fact that a large proportion of our best educated men either do not vote at all or fail to vote intelligently from the viewpoint of those of us who seek reform in the ballot. But surely there will be a better grasp among the electorate of what they are doing if they can read and write the English language than there will be if they can do neither. It will be urged that many of our foreign born can read and write in their own language and have considerable intelligence in the language of their fathers, upon reaching our hospitable shores. That is undoubtedly true, but, if so, that intelligence will make them then the better able to learn the English language within the two years from the first day of next January, as proposed by my amendment. At this moment in this country we are confronted by a situation such as never before has confronted us. We are confronted with possibilities of war with a power, many of whose people are in this land, and at this time those people who have not yet learned the English language and who are reading papers in sympathy with this foreign country are a menace. If you do not believe this is so, and that this situation is staring us in the face, let me call your attention to what the Democratic Bureau of Naturalization sent out under the administration of Woodrow Wilson only yesterday. While pointing out the impossibility of

laying down any hard and fast rules on the subject, the letter issued by the bureau declares that the prime requisite is ability to speak the English language. "It is through this medium alone," it says, "that aliens can acquire a practical knowledge, both in and out of the schools of our institutions. This will lay the necessary foundation for instruction in some simple outline of American civics, the duties and the obligations as well as the privileges and immunities of American citizenship. Above all in this connection they should be taught that the supreme authority in this country is the law, and that the first duty of an American citizen is obedience to that law, even though it may seem an unwise or objectionable law, the remedy in the latter case being through constitutional methods to modify or change the law." That is the recommendation of the Board of Naturalization under the Democratic Party in Washington in this year of our Lord, 1915. It is made necessary at this time by the conditions that are confronting that administration and the difficulties that beset it because of those conditions. My proposition disfranchises nobody now having the right to vote. It is not an attempt to do away with what exists. It is only an effort to provide for the future.

It will be urged here that this proposition is a "Know-Nothing" proposition. To those who are fair this statement will make no appeal; it is in itself a know-something proposition; something of our land, something of our institutions, our Constitution, history and ideals before one can acquire the privilege of the franchise. This principle has never been a "Know-Nothing" principle, save possibly in one State, in the history of the United States. Every literacy test amendment has been brought about at a different time than the period in which "Know-Nothingism" was a strong factor in our civilization, and the only State in the Union which can possibly be accused of putting such a clause in its Constitution during the period that the "Know-Nothing" craze aroused the country, is the State of Massachusetts, and that is because it was passed in that State in the year 1857, long before it was passed in any other State of the United States. We have reached a place in our history where many of those who a few years since actively advocated giving the voters all power, are now as actively advocating the taking of a portion of the power away from them. Many of the advocates of direct primaries in this Nation and State are those now loudest in the call for the short ballot. I will not at this moment either praise or condemn the short ballot. All I wish to call your attention to is the fact that, having persuaded the voters to believe that they knew everything, we are a trifle inconsistent in endeavoring to prove to them now

that they know nothing and are not to be trusted. But you can do no better thing here to help prepare them to govern themselves than to have the requirement for the future that they should read and write the English language, and whether you do away with the direct primary or not, and create a short ballot or not, you can do nothing better here than to raise the standard of citizenship by requiring that knowledge. I have stated that illiteracy grows in the State of New York among adults. That growth is being checked as much as possible by our educational methods. I present for the consideration of the Convention a table showing the percentage of foreign-born population in states having a literacy test, by which it appears that Massachusetts has 31.5; Connecticut, 29.6; California, 24.7; and New York, with no literacy test, 30.2. These figures are taken from the Federal census of 1910.

STATE	Population	Native born	Foreign born	Percentage	
				Native	Foreign
Alabama	2,138,093	2,118,807	19,286	99.1	0.9
Arizona	204,354	155,589	48,765	76.1	23.9
California	2,377,549	1,791,117	586,432	75.3	24.7
Colorado	799,024	669,437	129,587	83.8	16.2
Connecticut	1,114,756	785,182	329,574	70.4	29.6
Delaware	202,322	184,830	17,492	91.4	8.6
Georgia	2,609,121	2,593,644	15,477	99.4	0.6
Louisiana	1,656,388	1,603,622	52,766	96.8	3.2
Maine	742,371	631,809	110,562	85.1	14.9
Massachusetts	3,366,416	2,307,171	1,059,245	68.5	31.5
Mississippi	1,797,114	1,787,344	9,770	99.5	0.5
New Hampshire	430,572	333,905	96,667	77.5	22.5
North Carolina	2,206,287	2,200,195	6,092	99.7	0.3
North Dakota	577,056	420,402	156,654	72.9	27.1
Oklahoma	1,657,155	1,616,713	40,442	97.6	2.4
South Carolina	1,515,400	1,509,221	6,179	99.6	0.4
Virginia	2,061,612	2,034,555	27,057	98.7	1.3
Washington	1,141,990	885,749	256,241	77.6	22.4
Wyoming	145,965	116,945	29,020	80.1	19.9
New York	9,113,614	6,365,603	2,748,011	69.8	30.2

I also present for your consideration, taken from the same source, a table showing the illiteracy in such states of the United States, outside of New York, as have the literacy test in their Constitutions, and which also shows, as far as New York is concerned, that in 1910 there were males over twenty-one years of age having the right to vote illiterate to the extent of 170,030, which in 1910 politically represented the voting strength of the illiterate vote in this State:

STATE	Illiteracy			Males over 21 who cannot vote account literacy test
	Total illiterate	Male	Female	
Alabama	352,710	173,726	178,984	124,494
Arizona	32,953	18,183	14,770	14,463
California	74,902	47,574	27,328	42,787
Colorado	23,780	12,680	11,100	11,343
Connecticut	53,665	25,785	27,880	23,562
Delaware	13,240	7,022	6,218	6,272
Georgia	389,775	196,026	193,749	141,541
Louisiana	352,179	171,423	180,756	118,716
Maine	24,554	15,006	9,548	13,070
Massachusetts	141,541	67,647	73,894	61,909
Mississippi	290,235	145,702	144,533	107,843
New Hampshire	16,386	9,210	7,176	8,413
North Carolina	291,497	142,108	149,389	107,563
North Dakota	13,070	6,645	6,425	5,467
Oklahoma	67,567	35,876	31,691	28,707
South Carolina	276,980	133,126	143,854	90,707
Virginia	232,911	121,329	111,582	92,917
Washington	18,416	11,724	6,692	10,580
Wyoming	3,874	2,869	1,005	2,594
				Illiterate males over 21 with right to vote
New York	406,020	187,107	218,913	170,030

From this table it appears that more people can vote in this State who are illiterate than are refused the right to vote in any other State for the same reason, and that number is steadily growing, instead of diminishing. My amendment, as I have said, disfranchises not a single one of these, but merely helps to hinder the growth of illiterate voting. If we add to that the female vote, possibly next year, or in the near future, we add ultimately 218,913 to that number, taking the same census as a basis. But this statement as to the female illiteracy covers more than immediate illiterate female voters, as the census includes all females over the age of ten years. I have estimated from the tables that illiteracy among the voting males is 5.0 per cent, and among females would be 5.9 per cent. in New York State, and thus, as to the voting strength among females after January 1st, if female suffrage prevails, I have estimated the female illiterate vote to be 189,180, basing it on an equal number of women voters. You may say that the women will not get the vote in 1916. That is possible, but you cannot say that they may not acquire that privilege during the next twenty years, and this Convention is trying to provide the organic law for that period of time. This last table I offer you as to illiteracy only applies to those states that have literacy tests, except as it applies to New York. The male voters in New York city who are illiterate amount to 91,815 at the present time, and in the rest of the State amount to 78,215,

showing that politically the proportions of city and State are nearly equal.

Mr. Parsons — Those figures which you gave, are they figures of illiterate citizens?

Mr. C. H. Young — Voters.

Mr. Parsons — From where were those figures obtained?

Mr. C. H. Young — United States census, 1910.

Mr. Parsons — And my information is that the census figures do not give the illiterate voters.

Mr. C. H. Young — My information is that I have seen the book and I have taken it from the book and the copy is here from a book over in the public library.

Mr. Parsons — I have had correspondence, if the gentleman please, with the Director of the Census, and from him I understand they do not give the figures of illiteracy of voters.

Mr. C. H. Young — You are misinformed, because if you will go to the library you will find them where I found them, and this is a quotation from them.

Mr. Parsons — Will you refer me to the page?

Mr. C. H. Young — I can, but not at this moment.

The Chairman — The gentleman is exceeding his time, but, inasmuch as no one objects, the Chair assumes that he is speaking by unanimous consent.

Mr. C. H. Young — I did not know that there was any rule about this.

The Chairman — The understanding of the Chair is that the rule limits the debate to ten minutes to each delegate.

Mr. C. H. Young — And that was in relation to the others; there has been no rule made as to this.

Mr. Chairman — According to the Journal before the Chair, that is the rule. No one is objecting. The gentleman from Westchester has the floor and may proceed.

Mr. Buxbaum — Can you tell us the votes on this amendment in 1894 which came up for consideration in the Committee of the Whole?

Mr. C. H. Young — There was no vote cast that I can find from the record. I say, the book does not show a vote.

Mr. D. Nicoll — It was never discussed in the Committee of the Whole. It was never reported favorably from the Committee.

Mr. C. H. Young — Yes, it was reported favorably from the Suffrage Committee but it was never voted on in the Committee of the Whole. There are among the males twenty-one years of age and over in New York city over 172,122 persons unable to speak or write the English language, of whom 91,815 now have the privilege of voting. You may ask what harm they have done or can do. My answer is that at any time in the past history

of the State they could have unitedly changed the result in the State. You may say they have never yet united in the State. I admit it, but I call your attention to the fact and merely suggest that William Sulzer was elected to the Assembly, after being impeached as Governor, in a district largely composed of illiterates. And that your mind may more steadily grasp that fact and how important it is, it is shown here that in that district there are 3,443 illiterate voters. Mr. Sulzer received 3,433 votes in that district.

Mr. Parsons — Has the gentleman any figures which show that any of those voters were illiterate?

Mr. C. H. Young — The gentleman has no such figures but he has figures to show that the Democratic and Republican candidate only got 2,000 votes, and as there are only 5,445 votes in the district, it looks as though it might be reasonable to expect that a large part of those illiterates voted for William Sulzer. It is not absolutely demonstrable but it is very close to it, as there is only a difference of ten between the illiterates and the votes which Mr. Sulzer received.

Mr. A. E. Smith — I would like to ask the gentleman if he has in mind the fact that the particular district he referred to has always been consistently Republican and also gave Governor Whitman a substantial majority.

Mr. C. H. Young — I have no doubt that that is true but that does not prove much in a time of excitement such as that when Mr. Sulzer ran for Governor.

Mr. Unger — With a nice sense of the English language and its meaning, may I ask whether in line 7 of this proposal the words "read and" are not surplusage, and whether or not a person who can write the English language cannot necessarily read the English language?

Mr. C. H. Young — My answer to that is that I have adopted the language of all the Constitutions of the various States and I thought that would be good enough for the State of New York. I do not like the language but this is as good as any I could find in any Constitution and I used it. Of course, in some States it is worse than that; in some States it is "read or write." Of course, there are qualifications in many States that are very difficult for the voter and are utterly unworthy and unjust.

Mr. Parsons — Will the gentleman state how many males there were of voting age in the Sixth Assembly District in 1910?

Mr. C. H. Young — Total males of voting age, 27,332.

Mr. Parsons — How many votes were cast?

Mr. C. H. Young — All told, for Member of Assembly, there were cast 6,040 votes.

Mr. Parsons — How many illiterate voters, males, of voting age were there in the district?

Mr. C. H. Young — There were voting 3,433.

Mr. Parsons — Not voting illiterates, but I mean, after you have deducted from the 27,000 males of voting age the number of illiterates, you still have 20,000.

Mr. C. H. Young — This is the total males of voting age, Mr. Parsons, however, and does not represent citizens, and there is no use of trying to impress this Convention with any such idea.

Mr. Parsons — Well, some of them are.

Mr. C. H. Young — Yes, 6,971 of them are. If Mr. Parsons wants the figures on illiteracy, there is the book of the United States census from which these figures were taken.

Mr. A. E. Smith — I would like to ask the gentleman how a non-citizen can be a man of voting age?

Mr. C. H. Young — I cannot understand your question.

Mr. A. E. Smith — How can a non-citizen be of voting age?

Mr. C. H. Young — He could be twenty-one years of age even if he is not a citizen. The voting age is twenty-one.

Mr. A. E. Smith — That is not an answer to the form of question that Mr. Parsons put, as I understood it.

Mr. C. H. Young — Well, I told him, how many people there were in the district and I gave him the correct figures or he would have corrected me, you can rely on that.

Mr. A. E. Smith — May I ask the gentleman what the "27,000" was?

Mr. C. H. Young — Total number of males of voting age in that district — of voting age, more than twenty-one years of age.

Mr. A. E. Smith — Including citizens and aliens?

Mr. C. H. Young — Including citizens and aliens, yes, sir.

Mr. Parsons — Now, Mr. Chairman, will the gentleman yield to me to read from a letter from the Director of the Census, the figures covering this?

Mr. C. H. Young — I do not want to be charged with your time.

Mr. Parsons — I will ask to have the gentleman's time extended.

Mr. C. H. Young — Can't you read that when you make your answer to this?

Mr. Parsons — No. The gentleman has a great desire for accuracy and it seems to me that he should like to have it as part of his speech.

Mr. C. H. Young — I will take the United States Census, which is here in my speech, and I will hang my hat on it.

Mr. Parsons — But the United States Census does not give your views as you speak them.

Mr. C. H. Young — We are an emotional people. But occasionally education, experience and history restrain emotion. Without education, and knowledge and love of country, the heart overcomes the intelligence and demagogism becomes reason. It seems to me that all these facts, figures and reasons demonstrate that my proposal is fair and proper; particularly as it disfranchises no one, and gives every one two years' time from January 1st next to acquire such knowledge of the English language as the Legislature may prescribe. In no other State having the literacy test has any such fair proposal been made. I am advised that there are organizations within the State which would advocate the passage of this amendment to the Constitution if it provided that it should go into effect January 1, 1916. I would not favor such a change, although that was my original proposal. Upon reflection, I believe that everyone should have a fair opportunity to acquire the privilege of voting, and nothing in my Proposed Amendment will hinder anybody who may be on the way to acquire that privilege to obtain it without qualification between now and January 1, 1918, and, thereafter, when they can read and write the English language; and if this amendment to the Constitution goes into effect it will give everybody the opportunity to acquire, within two years, the simple knowledge that the Legislature may require, to entitle them to the privilege.

Mr. Schurman — I would like to ask Mr. Young whether, in his examination of these statistics, he found any statistics to show what effect on the reduction of illiteracy the introduction of this literacy test has had in any of the States which have adopted it?

Mr. C. H. Young — My only answer is this: I cannot give each State specifically, but I can say that New York State is the only State where illiteracy has spread among all those twenty States. It has become less in all the rest of the States, whereas illiteracy is gaining ground in New York.

Mr. Schurman — Take the groups of States with similar geographical position and similar conditions, some of which have introduced this literacy test and some have not; then you would expect to find a difference there in the results as affecting literacy, wouldn't you?

Mr. C. H. Young — Yes, some difference.

Mr. Schurman — Well, now, if you take the State of Washington which introduced this test in 1896, the decrease in literacy between 1900 and 1910 was 1.1 per cent. That is good as far as it goes. California, on the Pacific Coast, also introduced this test in 1894.

Mr. Young — Yes, sir.

Mr. Schurman — And there, too, the decrease in illiteracy for the ten-year period from 1900 to 1910 happened to be also one and one-tenth. Now, there is a sister State on that coast which has not introduced this illiteracy test, the State of Oregon, and in that State the reduction of illiteracy for the ten-year period was one and four-tenths per cent. I have similar examples from other parts of the country, but it would not be fair to interrupt your speech to attempt to get them all in now. Perhaps I may get an opportunity later. But I want, at this stage, to express my doubt, on the basis of these statistics, of the effectiveness of your proposal in reducing the illiteracy —

Mr. C. H. Young — That proves nothing, in the first place; it proves nothing whatever. It is to be regretted that the educational departments cannot make the people literate who are illiterate, but what we are after is patriotism as well as literacy, and we cannot have it unless the people understand the English language, and you cannot define fractions in patriotism even if you can in literacy. I now pass to the second proposition. It is expedient to pass this amendment to the Constitution. I believe it to be of the highest expediency. I have already shown that the states having the highest foreign population are practically the states of Massachusetts, Connecticut, California and New York. In some of the letters submitted by me to the delegates of the Conventions there have crept errors of conclusion, not of statistics, which arose from various causes, but in the information and schedules which I have submitted now there are statistics only and hence no such errors. These figures have been taken from the Federal Census of 1910, and my conclusions eliminated. As to the question of expediency, therefore, it appears that of those states having the higest proportion of foreign-born citizens where the literacy test has been placed in the Constitution it has met with overwhelming favor. In Massachusetts it has existed for over a half century and no serious attempt has been made to change it in spite of the steadily growing increase of foreign-born population. In California the Chinese question was taken care of in their Constitution long before 1894, and the Japanese this side of that date, so that these questions did not influence the vote in 1894. In spite of their 24.7 per cent. foreign-born population, the people voted for the literacy test by a vote of 170,133 for, to 32,281 against, and that vote was taken in California the same year that our last Constitution was adopted, and had our Constitutional Convention the courage to put the literacy test among its provisions, it would have met with the same popular favor that it met with in California. There certainly was and is a larger conservative vote in the State of New York than there ever was or ever will be in

California. Connecticut, in 1897, with its tremendous foreign-born population of 29.6 per cent. endorsed the literacy test by a vote of 47,577 for, to 4,585 against. That state and Massachusetts more nearly resemble each other and New York in conservatism. Surely these two states since 1894 show the trend of modern thought on this subject, but if additional evidence is needed to prove that this proposition is a step forward and not a step backward, the schedule I now present shows that outside of Colorado, Maine, Massachusetts and Wyoming, all the states which now enjoy the literacy test have placed it in their Constitutions since 1894, and our most modern states, Arizona and Oklahoma, have embraced it in their constitutional provisions within a year or two. The literacy test amendment was adopted in Alabama in 1900; in Arizona, 1913; California, 1894; Colorado, 1876 (in effect 1890); Connecticut, 1897; Delaware, 1897; Georgia, 1908; Louisiana, 1898; Maine, 1892; Massachusetts, 1857; New Hampshire, 1902; Mississippi, 1890; North Carolina, 1900; North Dakota, 1896; Oklahoma, 1911; South Carolina, 1895; Virginia, 1902; Washington, 1896; and in Wyoming in 1889.

It is no recommendation to you possibly that such states as Arizona and Oklahoma believe in such a policy, but it naturally tends to show the trend of modern thought even in the radical states. I have already shown you that trend in the conservative state I have mentioned. These facts and figures seem to me to demonstrate fully the popularity of such an amendment with the voters. If there is a more clear way of demonstrating that popularity, I do not know of it. You have observed as I have, the philosophy which is not pleasant to contemplate, but which is nevertheless true, that those who have privileges are always the ones most anxious to keep others from enjoying privileges with them, and that this is as true of one class of citizens as it is of another. It is not an altruistic philosophy, but it is nevertheless a fact. Based upon that fact and the experience of other states and the trend of modern thought as shown by the action of our other states, it would seem to be expedient to put this Proposed Amendment in the Constitution. It may be urged, and probably will, that a majority of the states have not yet a literacy test; and that the states not enjoying that test contain a much larger proportion of the total population of the country than those states which do so enjoy it. This is undoubtedly true, but it is not an argument which should stay the trend of modern thought in the State of New York. Modern thought is bearing away from the property test and bearing toward an educational test. I might as well use the argument for the literacy test, that a majority of the

states have either a literacy or property test, as those opposed to this proposition may argue that because a majority of the people are not living under such a law, that the State of New York should forego such a test. Of course newspapers printed in foreign languages will oppose this test and they will influence voters against it. But, if the philosophy of the voters is, as I have attempted to show, and as it must have been in Connecticut, in Massachusetts and other states that have adopted this test lately, their argument will not persuade those who can vote, who are not being deprived of the right of voting under such a test, to vote against the proposal which deals entirely with the future and not with the present. The structure of our State and National government is built up of strong timber or it would not have survived as it has for over 125 years. If we wish to make it stronger and firmer than it is, if we wish to continue a safe democracy in the State, we should put in new timber to help uphold the structure, the foundation timber of elementary education. To broadly paraphrase the final peroration of a great statesman from Massachusetts in a speech made by him in the United States Senate in 1896, I shall conclude. More precious even than the forms of government are the mental qualities of our race. While those stand unimpaired, all is safe. They are exposed to a single danger, and that is that by constantly changing our voting citizenship through the wholesale, but valuable and necessary infusion of Southern and Eastern European races, whose traditions and inheritances are wholly different from our own, without education, we shall imperil the structure we have so laboriously struggled to maintain. The danger has begun. It is more imminent than ever before. We should check it. This can be more easily and effectively done now, than hereafter. The doors to the foreign-born should remain open; but the door to voting should rest on education. The doors to voting are wide open but they should be closed enough to make intelligence a fair test of the power to vote. We should place a sentinel beside the open door and that sentinel should be education.

Mr. Schurman — I asked a question of the speaker, and I showed in connection with it that on the Pacific slope the introduction of the literacy test did not tend or had not tended in the years from 1900 to 1910 to reduce illiteracy. I have a great many similar examples and tables before me, but I content myself with a similar exhibit from the Eastern States. Maine introduced this literacy test in 1892. During the period from 1900 to 1910 the reduction of illiteracy in that State was one per cent. New Hampshire introduced the literacy test ten years later, 1902. The reduction of illiteracy during the ten-year

period was 1.6 per cent. Vermont did not introduce it at all, and the reduction in Vermont during the same period was 2.1 per cent. So far as I can make out, Mr. Chairman, the introduction of this literacy test does not work out in the direction of reducing illiteracy. Now, the speaker has spoken about illiteracy in the State of New York. This is a subject about which the real facts may easily be misconstrued. Curiously enough, for the last period, 1890 to 1900 and from 1900 to 1910, the percentage of illiterates in the State of New York was a constant figure — 5.5 per cent. During this period, and especially during the last ten-year period, other states reduced their illiterates, but I want to point out that New York was laboring under exceeding great difficulties. Circumstances were altogether peculiar. During this period the population of the United States increased by about sixteen million, eight million by immigration, and of that immigration one million and one-third remained in the State of New York. Now, gentlemen, where have our immigrants been coming from during this latter period? They have been coming from Russia, and the illiteracy in Russia is 70 per cent; they have been coming from Italy, and the illiteracy in Italy is 48 per cent; they have been coming from Hungary, and the illiteracy in Hungary is 40 per cent; they have been coming from Austria, and the illiteracy in Austria is 26 per cent. The immigrants we have received during this ten-year period from those four countries more than explain the drawback which New York shows in comparison with other more favored states during the same period. Mr. Chairman, that is not all. During this ten-year period, the country as a whole has greatly reduced its illiteracy. We have sixteen million more people than we had, but there are fewer illiterates in the country to-day than there were in 1900. They have been reduced by three per cent, and here in New York State the work among children between the ages of ten and fourteen years makes a better showing than anywhere else in the United States. The average for the reduction of illiteracy throughout the United States during this decennial period is 35 per cent, including children fifteen years of age, and here in New York State, 46 per cent. A good deal has been said or implied with relation to these foreigners who come to us, unable to speak our language, but I desire to point out, with all earnestness and solemnity, that the foreigners who have come to the State of New York have been more anxious to give their children an education in our schools than the parents of the native-born Americans of the State of New York. They make a better showing, I repeat, with relation to the education of their children than the native-born

parents do. That being so, I desire to say that from the educational point of view there is absolutely no reason whatever for the introduction of this measure. We do not need it so far as the education of our children is concerned, and the statistics of other states seem to show that where it has been introduced it does not make for the decrease of illiteracy.

Mr. Dunmore — May I ask what is the authority for the statement that the parents of the immigrant children are more anxious to have their children educated than the native-born parents?

Mr. Schurman — The Department of Education of the State of New York, from whom I have a statement in my hands.

Mr. Cullinan — I would like to have the privilege of answering Judge Dunmore's question from the census statistics of the United States.

Mr. Schurman — I have said that from an educational point of view there is absolutely no need of this measure. There remain, of course, other considerations. Do we need to adopt such a measure as a matter of State policy? That is a legitimate question for discussion. I do not propose to devote any time to it. I am afraid my time is already nearly gone. I will only express my own conviction, that I see no reason for introducing it from that point of view.

I am inclined to think the number of persons who have come here from foreign countries, and speaking a foreign language, unable to speak our own, has been unusually large in these later years. We have had work for them — work for them on our highways; work for them in digging our Barge canal; on the Ashokan Dam — they could earn a dollar here easier than anywhere else in the world. It may very well be that after this war is over we shall have fewer of them than in the past, but even if we have such numbers as we have had in the past, I say, for one, there is no reason for anxiety with regard to the capacity of this, the greatest state in the Union to assimilate all that come to us without resort to a measure of this kind, which I think these people would feel to be a grievous burden and which I think would be an injustice.

Mr. Weed — Mr. Chairman, I had not intended to take up the time of this Convention, time which has now become so exceeding precious, with any remarks upon this subject. But it has been understood that I am most heartily in favor of the amendment proposed by Mr. Young, and I have been asked to make some few remarks upon the subject. They will be very brief. I don't think that this is a question to be determined by statistics, by these close percentages, but it is a question to be determined whether you desire to introduce into your voting population the highest

intelligence that the people are capable of in casting their ballots upon a public question. Now, it does seem to me that this is a proposition which cannot be gainsaid, that these requirements of educational qualifications for an intelligent vote is open to any argument that is worth consideration. That is the prime basis of our institutions, the intelligence of the voter and there is no way that I know of that you can better secure that intelligence than by requiring an educational qualification on the part of the voter. If the State of New York were the first to adopt this proposition, it was one which would commend itself to me. The fact that it has been adopted by so many states with such a variety of situation and variety of circumstances, strongly in addition commends itself to me, and it does seem to me that where we are spending these millions upon millions of dollars for the purpose of education, when we are making that expenditure largely for the purpose of bringing about this intelligence on the part of the voting public that they can understand our public institutions, appreciate public measures, and act upon them intelligently by reason of the education they have received in our public schools. Now, this amendment is such that it is not going to debar anyone who at present has the privilege. It offers opportunity for those who are not now able to read or write the English language and who do not yet have that privilege and who desire it, to obtain that small amount of education which will enable them to read and write the English language, and it does seem to me that there ought not to be two views upon this subject. Of course I know there are, and I have no doubt they will be strongly expressed here, but the proposition that you want to have intelligence on the part of the voter and that that condition is to be obtained by education it seems to me cannot be gainsaid.

Mr. Bell—Mr. Chairman, and Gentlemen: In the few moments allotted to me, I shall bring before you no figures, and no statistics, but I most earnestly ask every delegate in this room to look down to the bottom of his heart and search his own intelligence, in a broad-minded yet scrutinizing way, and see if this question of voting that is to be argued out, either upon the evidence offered of what other states have done, or by facing the future which we cannot avoid in this present grave crisis, is not one of the gravest issues confronting us. Gentlemen, we must stop to think what we are. This is not a question of nations, it is a question of races, and when all is said and done, there is not a man in this room who dares deny that we are an English race, born and bred and brought up with the traditions of the men of England; of Anglo-Saxon stock. It is idle to bring to my view that the Anglo-Saxon race is in the minority in our

country; a little leaven leavens the whole lump, and if there should be only one Anglo-Saxon left, we could not forswear our heritage. History shows, and your own hearts will remind you, if you stop to reason, that the unavoidable truth is we are Anglo-Saxon. We welcome foreigners here, and I appreciate humbly and reverently all that they have done and will do towards the upbuilding of our country, but if we hope to make a real Nation of ourselves — we are yet young — we must do what we can to solidify ourselves, and to lead our country forward in the precious views and traditions of the men who have made it possible for us to be a Nation. I don't mean to be an Anglo-maniac. In the sense that I am speaking of Anglo-mania, I might fairly say that the Declaration of Independence was the greatest act of Anglo-mania that we ever did in this country. It was the fire in the souls of those ancient men handed down from that day in 1215, who met at Runnymede and signed the Magna Charta, that inspired that declaration, and everyone of us here, whatever we may think now of the expediency of allowing our foreign population to vote, should pause to remember that we came into this chamber and listened with reverence to that great primal enunciation of a united Anglo-Saxon race, and it is this that is a heritage which it is our duty to preserve. We so lightly speak on the Fourth of July of the motto of our country, E pluribus unum. The important word in that is "unum." Others come here and we take them from all quarters of the world, but if we live up to the traditions of our country and if we perseveringly try to lead these people into our ways of thinking and acting — it all comes down to this: We must make them One. We have the heritage of Anglo-Saxon law. Shall we throw away that blessed torch of liberty? Shall we not keep it inviolate and burning, for the men who come here from other shores? Let us welcome them. Let us give them everything that the wealth of this country can offer, but let us say to them at the same time, "You have got to learn our language because that is the vehicle of the thought that has been handed down from the men in whose breasts first burned the fire of freedom." Take the country where many of our ancestors came from, those bleak islands now so sadly at war. In that country they spoke all sorts of languages, resembling the medley in our country to-day. Then came the French conquest, and then Geoffrey Chaucer, at the end of the Fourteenth Century, saw that by popularizing all the local English dialects, taking what he could at the time, as far as he was able, in the Canterbury Tales, made a vehicle of thought which the people adopted and spoke. And then came along the great reign, of which my friend Mr. Beach spoke, of Prince Hal, when he came to the throne,

and that was the first time that the Englishmen, as such, were solidified as a Nation; but, Gentlemen, I am bold to say that there is a greater word than "Englishman," there is a greater word than the boundary of any island: it is the word that signifies our heritage of the English idea, and that idea goes farther than United England, it goes back to the time when in Germany the northern people came over, the Angles, Jutes, Saxons and the Danes, and settled. It is an impalpable influence which has finally crystallized itself through and in our language, and I plead with you, my friends, when we think of this fact, when we think of our responsibility to the future, when we think of our heritage from the past, let that language that was spoken not only by Wellington, but by Washington, by Mansfield, as well as by John Marshall, by Wilberforce, as well as by Phillips Brooks — let that be the language which, although it may fetter our immigrants, it will also open to them, and lead them upward into, the path of comprehending the blessed vision of liberty which we, more than any other nation, now possess. If we can do that, we shall look beyond political expediency, we shall look beyond any kind of statistics, we shall look to a higher sense of citizenship, a nobler patriotism, and, most of all, a more effective and convincing national character.

Mr. Unger — Will the gentleman advise me whether or not it was Sir William Gilbert, who wrote the immortal lines:

"For he himself hath said it,
(And it's greatly to his credit)
That—he—is—an Englishman;
He might have been a Prooshan,
A Frenchman, Turk or Rooshan,
Or an Eye-tal-i-an;
But in spite of all temptations
To belong to other nations,
He remained an Englishman,
He remained an Englishman!"?

Mr. Marshall — Mr. Chairman, in view of the remarks of the gentleman who has just taken his seat, I offer the following amendment.

The Secretary — By Mr. Marshall: From page 1, line 7, strike out the word "English."

Mr. Marshall — I have offered this amendment because I am not one of the English race. There is not one drop of Anglo-Saxon blood that courses through my veins, and yet I think that I have as much appreciation of the spirit and genius of our insti-

tutions as has any member of this body. It seems to me as though the gentlemen who have introduced this measure, and those who have in such unmeasured terms approved of it, are contributing to the "Know-Nothing" idea. To think that nobody shall be permitted to exercise the right of suffrage in this State who is unable to read and write English, is to think that nobody can have the spirit of Americanism or the spirit of patriotism, who is unable to read that language. That seems to be the idea of the gentlemen who have introduced this measure, and yet I know that in the days of peril in this country there were thousands who were unable to read and write the English language who hastened to defend the flag of their adopted country. I have had occasion to take a prominent part in two campaigns to defeat legislation offered in Congress to adopt a literacy test for immigrants, and I am happy to say that I was one of those who succeeded in prevailing upon President Taft and President Wilson to add their vetoes to such measures to the veto which years before had been given by President Cleveland to a similar bill. I recognize the difference between the test of immigration and the test of naturalization. I have no objection to the requirement of a literacy test, so far as the exercise of the franchise is concerned, but I do object to making that test the test of the English language alone. There are thousands of people in this State who are well-educated citizens, who are intelligent men, who know all that need be known about the nature of our government, who are much more intelligent than many of those who can read and write English, and yet who cannot read that language. If this measure were adopted, I can assure you that it would strike havoc into certain ranks which to-day are looking in a friendly spirit upon the work of this Convention. Let me tell you, for example, that there is in this State a body of people numbering over a million who read the Yiddish language. Many of them cannot read any other language. Most of them read newspapers published only in that language. I have before me a list of five newspapers published in the city of New York, whose average daily circulation, in Yiddish, is upwards of 500,000 in the aggregate. There is one of those which has a daily circulation of 175,000 and that is on a very fair estimate of its circulation. It is the sworn statement of the editor of that newspaper. These newspapers are wide-awake. They reach an intelligent reading public, a reading public which obtains its opinions with regard to public affairs largely through their columns. They are publishing daily reports concerning what is going on in this Convention, with regard to the work which is here done. I have had

occasion to read a number of those papers in the last few weeks and I find that they treat this Convention much more fairly than has a certain portion of the English press of the city of New York — much more fairly and much more intelligently and much more with a desire to instruct the people as to what is being done here and what the aspirations are of those who are seeking to draft a Constitution for the people of this State.

These people cling to their language out of sentiment Many of them are people who read the English language as well. Some of them are able to read half a dozen languages, and still they cling to their own language, which is one which, to a great degree, marks their sufferings and their martyrdom throughout the ages. These people would resent as an insult any measure introduced into this Constitution which would say that, if they read the Yiddish language alone and cannot read English, they are ignorant, unintelligent, unfit to exercise the right of suffrage. I can tell you that, instead of possessing their friendship as we now do, we would have their enmity from now on until election day is over. It is absolutely unnecessary for us to cast such an insult into their faces. They will tell you that at a time when the barons at Runnymede had to sign their marks to that document, the Magna Charta, their ancestors, who had no English or Anglo-Saxon blood flowing through their veins, were able to read and to write. And although they did not participate in the Magna Charta and although they were made the objects of hateful discrimination in that document, those of their speech had previously educated the world in the Decalogue. They had developed a literature rich in every department of thought and one branch of them had given to the world the Sermon on the Mount. Yet we are told here that these people, because they may not be able to read the English language, because they come to our shores as refugees from oppression, ready to devote themselves and their thoughts and their hearts and their minds to the development of this country, who are able to read and write a language through which they can gain knowledge and information in regard to the affairs of this country, are unfit to exercise the right of franchise. Under the Federal Act of Naturalization, it is necessary for any man who desires to become a citizen to comply with a literacy test. He must be able to read. The statute does not require him to read the English language, Congress, in its wisdom, thought it was sufficient if he were able to read some language, and the ability to read is the important test. Let me tell the gentlemen who have introduced this measure that in this very Yiddish press to which I have referred there is con-

stantly afforded to the reader instruction in regard to the fundamentals of our government. In one of these newspapers some years ago a history of the United States was published serially, so that the readers were enabled to become instructed in the history of this country. An abstract of the Constitution of the United States was printed. An abstract of the Constitution of the State of New York was printed. There is an organization in the city of New York, of which I have the honor of being a director, the Educational Alliance, which has for years past placed in the hands of every immigrant who comes to this country, in Yiddish, a word of welcome, which is accompanied by a statement as to the resources of our country, as to its general government, as to the important facts which it is necessary for any citizen to know with regard to our form of government and as to the duties and rights of citizens.

The Chairman — The gentleman's time is up.

Mr. Marshall — I would be able to continue this discussion for some time, but it is unnecessary for me to add anything more to the general proposition than to say one of the most fatal acts that this Convention could perform would be to adopt the amendment as it has been proposed. There is no reasonable objection to the test that a citizen shall be obliged to read and write, but there is also no reason why he should be compelled to read and write English alone, any more than he should be compelled to read and write the language which my friend quoted, in which were retained the words "e pluribus unum."

Mr. Wickersham — Mr. Chairman, I move that the Committee do now rise, report progress and ask leave to sit again.

The Chairman — All those in favor of that motion will signify by saying Aye, contrary No. It is carried. (The President resumes the Chair.)

The President — The Convention will come to order. The gentlemen will take their seats.

Mr. Stanchfield — The Committee desires to report progress on General Order 52 and General Order No. 27, and ask leave to sit again.

The President — The question is on granting leave. All in favor will say Aye, contrary No. The Ayes have it and the leave is granted.

Mr. Wickersham — I move that we adjourn.

The President — The Convention now stands adjourned until to-morrow morning at ten o'clock. Whereupon at 11:00 p. m., the Convention adjourned to meet at 10 a. m. Wednesday, August 25, 1915.

WEDNESDAY, AUGUST 25, 1915

The President — The Convention will please be in order. Prayer will be offered by the Rev. J. Addison Jones.

The Rev. Mr. Jones — Let us pray. Almighty God, who hast made of one blood all nations of men, we thank Thee for all the men in every line and in every age who by their faithfulness in their various stations have made some worthy contribution to the purity, the peace and the progress of our race, and we ask that Thou wilt grant unto us the guidance of Thy good spirit, that we may emulate their virtues and that we may grow in the ability to think truly, to speak truly and to act truly so that our thoughts and our words and our deeds may be woven into the abiding fabric of human achievement. In the broad fields of endeavor and amid the complexities of our civilization, grant us wisdom and strength to hold our life and our labors in steadfast loyalty to Thy law and to Thy purpose. So may our whole life and all our work be efficient and well-pleasing in Thy sight. For Thy mercy's sake, Amen.

The President — Are there any amendments to be proposed to the Journal as printed and distributed? There being no amendments proposed, the Journal stands approved as printed. Presentation of memorials and petitions. Communications from the Governor and other State officers. Notices, motions and resolutions. The Secretary will call the roll of districts.

Mr. Barnes — Mr. President, I move amendments to Int. No. 696, and ask that it be reprinted and recommitted to general orders.

The President — It is moved to discharge the Committee of the Whole from further consideration of Int. No. 696, to amend as indicated and to recommit to the same Committee. All in favor will say Aye, contrary No. The motion is agreed to.

The President — Reports of standing committees. Reports of select committees. Third reading.

Mr. Wickersham — Mr. President, I move that the calendar of third reading be dispensed with for the day.

The President — Is there objection? The Chair hears none and that order of business is dispensed with for the day. Unfinished business of general orders. Special orders. The Convention will now go into Committee of the Whole for the continued consideration of the special orders of the day. Will Mr. Stanchfield take the Chair?

The Chairman — The Chair recognizes Mr. Wagner.

Mr. Wagner — Resuming the discussion of last night it is very clear from that discussion and especially from one of the addresses we heard that the question of a literacy test for voters is one which does not apply to this day of toleration and of liberal thought, especially in this State. What is the meaning of the amendment proposed by Mr. Young? What are its future results? The answer to those questions is well known to men who are familiar with the history of our country, and especially the history of our State. For this proposition is not a new one. It has come before our country several times in varying forms. Whether applied to the vote or to immigration or to citizenship it is practically the same thing, it has the same reasons behind it, and it has the same objections to meet.

The Proposed Amendment provides that no person shall be entitled to vote unless able to read or write the English language. Obviously that proposal is directed against the foreign born American. Remembering that the vote is the only practical inducement to foreigners to become naturalized, is it not plain that this is an attempt by indirection to exclude the alien from citizenship and the rights and privileges which belong to citizenship? Remembering that the great mass of foreigners that come annually to our shores are assimilated into and become part and parcel of the American people because they strive and hope and succeed in acquiring the right to vote, can you not recognize in this amendment a clandestine effort to prevent this assimilation of alien blood into our citizenship and to segregate and exclude the foreigner from the rights, the privileges and the opportunities which we have always held out to all men? This amendment is subject to all the criticism and to all the condemnation which was turned upon the attempt to restrict immigration by the application of a literacy test. That policy and this proposal are akin; and every argument applicable to one is available against the other. As a matter of fact this proposal is more dangerous and more un-American than the application of a literacy test to immigrants. For while the latter would exclude illiterates entirely from our gates, this amendment would invite them in, separate them from their fellow men, deny them equal opportunity and place a ban upon them which they themselves are powerless to remove. There are many reasons why the policy proposed in this amendment should not be adopted. The very history of the proposal is sufficient to discard it. In 1837 the Know Nothing Party incorporated into its platform the following declaration:

That Europe is industriously ridding herself of an excess population now becoming burdensome to her; and whom does she

send? Her paupers, her convicts, the outpouring of her almshouses and jails. * * * That the foreigner had become the tool of the political wire-puller; that the naturalization laws had become a dead letter; that the foreign vote had become a decisive factor at election; that the foreigner, especially the Irish, was willing to obtain office and power by any means." That was the declaration of the Know Nothing Party in 1837. Would any political candidate make that statement to-day? Would any political party adopt that principle to-day? Is not every man in this body now ready to denounce that Know Nothing dictum as the voice of ignorance, bigotry and hate? And yet I say to you that this Proposed Amendment imports the same thing as did the old Know Nothing declaration. You do not characterize the foreigner so frankly. You do not openly malign the Irish or any other race. You do not in words forbid to the foreigner an asylum on our shores. But, in so far as you dare to go, you take from him the opportunity and the privileges which your ancestors enjoyed when they like the immigrants of to-day found in this land a refuge from the very spirit of intolerance and hate which finds expression in this amendment.

This amendment is sad testimony of the selfishness, ingratitude and imprudence which is inherent in human nature. Suppose that the Know Nothing propaganda had been acceptable to this country; suppose that its narrow policies had been pursued in this republic instead of the principles of humanity and justice which have vitalized our national life. Would our battles have been so well fought? Would our cities have been so well built? Would our industries have been so well developed? Would our railroads, our mines, our farms, our factories, our schools, our newspapers,— everything which makes this nation great and wonderful in the annals of the world,— would they have attained to their present degree of perfection, had it not been for the poor immigrant who fled from persecution and bigotry and brought to these shores nothing but his illiteracy and an ambition to be a free man and to do a free man's work? Would our battles have been so well fought, I ask you, without the immigrant? In the Revolutionary War itself, there was a Lafayette from France, Pulaski and Kosciuszko from Poland, Steuben from Germany, Sullivan, Barry and a multitude of Irishmen or sons of Irishmen fighting side by side in the Army of Washington, the war which was waged to vindicate the principles which this amendment now seeks to nullify. I need not recite to you the glorious record of the foreign-born American as he stood in the trenches at New Orleans, as he followed the flag of Lee or of Grant, or as he

charged up the Cuban heights in our own day; I need not remind you that upon the very last occasion upon which a drop of American blood was shed for the flag, there was numbered among the slain bluejackets at Vera Cruz, a Bohemian, a Polack, a Jew and an Irishman? The foreign-born American has fought our wars; he has constructed our railroads; he has developed our commerce; he has built up our industries. In every phase of our national life he has been prominent; in every sphere of human endeavor he has blazed a path of progress and of glory. I speak of the old immigration composed principally of Irish and Germans. But what new fear has arisen? If the literacy test was not applied to the Irish and the German, why should it be applied to the Jew, the Italian, or the Slav of the new immigration? Like our ancestors, they now are flying from persecution, from ignorance, from inequality; like our ancestors they expect to find here freedom and equal opportunity. Are we going to deny to them an equal opportunity? Are we going to withhold from them the equality which our fathers enjoyed? Are we going to deprive them of the privileges guaranteed by our traditions, by our ideals and by the spirit in which and through which we have become the exponent to the world and to all time of a free republican government? And yet this amendment contrary to our traditions and our history would deny the vote to the foreign born unless he could read and write, would treat him as an inferior before the law because he is uneducated. There is no policy to my mind more unwise, more unjust, more un-American. I stated at the beginning that every argument which applies to literacy as a test for immigration can be directed against it as a test for suffrage. When President Cleveland vetoed in 1897 an immigration act containing a literacy test he said this: "Heretofore we have welcomed"— and this applies now —"Heretofore we have welcomed all who came to us from other lands except those whose moral or physical condition or history threatened danger to our national welfare and safety."

The Chairman — The gentleman's time is up, and we have but fifty minutes, with about ten speeches, and the Chair feels obliged to enforce the rule.

Mr. Bell — Mr. Chairman, I ask unanimous consent that the gentleman from New York, Mr. Wagner, be allowed to continue his eloquent address.

Mr. Leggett — No. I object.

The Chairman — Is there objection?

Mr. Whipple — Mr. Chairman, I hope he will be allowed to continue some little time at least. To cut off his argument at this time is not right.

Mr. Leggett — Mr. Chairman, I have no objection to Mr. Wagner, but I have objection to anybody taking any more time in this matter than they have to.

The Chairman — The Chair hears no objection and the gentleman from New York may proceed.

Mr. Wagner — President Cleveland in 1897, in his veto message of the literacy test, said this: "Heretofore we have welcomed all who came to us from other lands except those whose moral or physical condition or history threatened danger to our national welfare and safety. A century's stupendous growth, largely due to the assimilation and thrift of millions of sturdy and patriotic adopted citizens, attest the success of this generous and freehanded policy, which, while guarding the people's interest, exacts from our immigrants only moral and physical soundness and willingness and ability to work." Last year President Wilson vetoed a similar bill, with a literacy test clause attached to it. I think that the ablest address made in the hearing before President Wilson was by a distinguished delegate of this Convention, who spoke here last night, and whom I had the pleasure of hearing at Washington; I mean Mr. Marshall. President Wilson's action in vetoing the measure was applauded by citizens in the highest plane of business, politics and society. His veto was based upon the fact that to his mind literacy was not a test of character or personal fitness, but merely of opportunity. That thought sums up all objections to the literacy test as a qualification of voters. Why should a man be disenfranchised merely because he was not blessed with the opportunity of going to school? Does illiteracy make a man undesirable? Does illiteracy make men criminals? I believe it to be well established that the most dangerous criminals in the community are those that use their knowledge of letters to consummate their insidious designs. You will find them scattered throughout the land, fluent of speech, skilled in handwriting, educated and studied, but nevertheless forgers, degenerates, extortioners and the like. Literacy or education does not in any respect determine a man's character or his desirability as a citizen. The immigrant of to-day becomes an immigrant merely because the land of his nativity denies him the opportunity to learn, and because he wishes to secure for his children in this country what has been withheld from him in the Old Country. Such a man has the most desirable character; he has ambition to elevate himself; he has the courage to strike out for himself in a new land; he is above his neighbor who stays at home and refuses to improve himself. He is thrifty enough to save, daring enough to try,

ambitious enough to succeed in life even though he cannot read or write the English language. Deprive this man of the privilege of voting. You would be committing the greatest political mistake that you possibly could commit in this Convention; you would be offering an affront to the men whose children will be the leaders to-morrow in this country.

If literacy were a valid test of voting, do you know that nearly 50 per cent. of our early settlers, the men who blazed the forests and fought the savage, the men who are idolized to-day as the pioneers of civilization, do you know that about one-half of them would not be entitled to vote? For in Massachusetts in the years 1653, 1654, 1655, 1656, the deeds on record show that 11 per cent. of the men made their marks and 58 per cent. of the women could not write their names, while in Virginia about the same time 46 per cent. of the jurors made their marks and about 75 per cent. of the women were illiterate. The same degree of illiteracy prevailed during the revolutionary period, and yet we rightfully boast ourselves to be a son or a daughter of the American Revolution. Would we disenfranchise our ancestors merely because they could not read or write the English language? Mr. Chairman, there is no good reason whatsoever for the adoption of this amendment. It comes before this body without the sanction of public sentiment, without the prestige of expert opinion, without the support of reason or of logic. I ask the sponsors of this measure to show what merit is in it, what prospective good to the State, what future benefit to our citizens? Is it practicable? Is it necessary? Is it economical? If this debate were to hinge upon the practicability of the literacy test, there would be need of no further argument upon the question. How is this test to be applied? When a citizen registers as a voter, to what extent is he to be examined in reading and writing? Is the matter to be so arbitrary that a man who can write his name and read a few magical words will be allowed to vote, while the man who is unable to do so is to be disqualified no matter how superior he may be in other respects? Can you conceive of any wisdom or justice in a policy which would refuse the vote to a man possessed of every moral, mental and physical qualification merely because he cannot read or write, while at the same moment it extends the privilege to the villian or the criminal merely because he can scribble his name or spell out a few words? What magic power is there in the scribbled name which converts the villian or the criminal into a desirable citizen worthy of the vote and degrades the illiterate to the plane of undesirables? I have an abiding faith in the good sense of this Convention; I have an abiding

faith in the good sense of the people of the State of New York and I believe that they will overwhelmingly reject this amendment in case you do not do so. There is no basis in reason, desirability or necessity for it; its only foundation is the narrow spirit of prejudice to which I have already referred and which asserted itself to a very limited extent in our discussion last night, or else it is another attempt upon the part of the rural communities of this State to restrict the voting capacity of the city of New York where the greatest number of foreigners have their homes. Either one of these motives is sufficient to condemn this proposal.

If the literacy test is not practical, it certainly is not necessary. For 139 years, this republic and this State of New York have worked out their political destinies happily, honorably and profitably. We have attained to a degree of political perfection which, to say the least, is not below the standards of history. The people of the State of New York have exercised the privilege of voting with all the intelligence, honesty and common sense that can be reasonably expected of human nature. No man can say that the net results of our elections have not coincided with the public will or with the standards of political morality and desirability. And yet, contributing to these net results, there have been during the years millions of illiterate voters who went to the polls, not competent to read a printed book, but able to read human nature; not capable of using a pen, but eminently qualified to wield the ballot without bias and without fear. Did the illiterate voter of other years prevent the election of Tilden or Cleveland or Hughes? Will you men in this Convention, all of whom received the vote of many an illiterate, make the concession that you are the products of a system which is so much in need of improvement that a constitutional mandate is required? Are you prepared to state that this body would have been more representative of the people, more responsible to duty, or more jealous of the honor of our State, had the last election been purged or purified, forsooth, by the elimination of the illiterate vote? I can see no necessity whatsoever for the adoption of this arbitrary amendment. I have searched the past and experience reveals no reason for this change; I have penetrated the future and I can see in it no prospective gain. I can see only loss, loss of ideal, loss of principle, loss of citizenship, loss of humanity and justice. But, Mr. Chairman, looking toward the future there is another consideration which constitutes a cogent argument against this proposition. It may upon slight thought seem trivial or indefinite or remote, but the fact I refer to is enormous and well defined.

The immigration problem is the greatest which we face to-day, just as my distinguished friend, Mr. Young, said last night. From the beginning of the world the procession of mankind has ever been westward. That procession received its impetus in the beginning of the world and up through the centuries it has gained in momentum until to-day it is irresistible. The Celt, the Latin, the Greek, the Teuton, the Goth, the Hun, they have all swept westward and to-day the people of eastern Europe are manifesting the same restlessness. Just as surely and as persistently as the ocean tides, the mass of humanity is flowing to-day and will to-morrow continue to flow across the Atlantic in increasing density and in more irresistible force. Upon that point the gentleman from Westchester and I agree. Whether we like it or not it seems beyond human possibility to stem the tide. Students upon the subject concede the condition and theorize upon the most available remedy. To my mind and to a multitude of men who know far more than I do about the question, the remedy lies not in repulsion but in assimilation. If these foreign masses are thrown upon our shores, it is political and economic folly to endeavor to keep them in racial separation and isolation. We must stimulate and encourage the process of assimilation with the great American people, making them one with us, transfusing into them our ideas, our spirit, our national life and I say to you that anything which prevents or retards the rapid assimilation of this foreign blood with the native is subversive of our traditional principles of humanity and justice. In depriving the illiterate foreigner, constituting 26 per cent. of all immigrants, of a vote, you are using the most potent means at your command to prevent him from becoming Americanized and to make impossible the unification of peoples on this continent.

Mr. Leggett — Mr. Chairman, I repeat my objection. I make the point that the gentleman's time has expired.

Mr. Wagner — I have nearly finished.

The Chairman — The gentleman from Allegany objects and the gentleman will have to yield.

Mr. Wagner — I have almost reached the end.

Mr. Leggett — I renew my objection and ask to have the rule enforced.

Mr. Cullinan — Mr. Chairman and gentlemen; the bill in question was referred to the Committee on Suffrage and for a long time it was impossible for a favorable vote on the bill to be reported to the House. Finally a majority vote was obtained or rather the necessary additional vote or votes, for the purpose of

having the bill considered by the Convention. Now, in discussing the bill I shall take the liberty of calling to the attention of this body certain facts and statistics considered by the Committee in the informal discussion of the merits of the bill. It is true that suffrage belongs to the States, and it is one of the rights reserved to the States; and that, although citizenship is conferred by the United States government, it does not give the right to vote in the States of the Union without their consent. Looking at the records of the last Constitutional Convention, I observe that there were sixteen States in the Union which permitted the suffrage within their borders in advance of the years of residence required for citizenship. Now it is rather unfortunate in a country like ours, liable perhaps, as we have seen in recent years, to promote a feeling of dissatisfaction with our form of government where suffrage and citizenship do not seem to move side by side.

Now the distinguished gentleman from Westchester in discussing this question laid great stress upon the fact that there was a large amount of illiteracy in the State of New York. In an examination of the census reports, these reports tell us that this form of illiteracy as reported does not mean inability to read and write, but it does mean that the person who is reported as illiterate cannot do both; he may read but he cannot read and write. The United States in 1906 provided a test for naturalization, which ought to meet the demands of the several States for suffrage purposes and, under the law, to meet all the different kinds of criticism likely to arise, and ought to be considered sufficient in all the States of the Union on the question of suffrage. Under that law, in the first place, the applicant must sign his application in his own handwriting. He is then obliged to swear to certain other things, as to his birth, as to his ancestry, as to his connection with institutions or organizations which are hostile or prejudicial to a representative form of government. He is obliged to bring before the officer of the United States witnesses who will testify as to his character and all of those important matters that go to form good citizenship and after a period of two years, he is also obliged to again bring witnesses as to his character, as to his fitness for citizenship, and then as a final condition and as answering in a certain degree this criticism as to illiteracy among our voters that he shall not be entitled to citizenship unless he shall be able to speak the English language. So it would seem that all of the necessary safeguards are provided for citizenship and for suffrage in the provisions made in the United States statutes with reference to the naturalization of aliens. Now,

what are the states who hold and have adopted this restricted form of suffrage? Upon an examination of the statistics, it appears that, barring the States of California, Massachusetts and Connecticut, this literacy test is more in the imagination than in the real facts, because these sixteen states to which the delegate from Westchester has referred are the states in which they have adopted the literacy test in connection with a "grandfather clause" which has been unceremoniously repudiated by the Supreme Court in the case of the State of Oklahoma so we have merely three or four states in the Union where the "grandfather clause" might not be applied who demand that the voters shall be able to read and write the English language, while the great States of the Union, that great galaxy of States of the Middle West who are the backbone of this nation, say to the people of the United States, we want the foreign-born because we rely upon the naturalization of the foreign-born as being equivalent to any standard of suffrage which might be required by any State of the Union.

The Chairman — The gentleman's time is up. The Chair is obliged to enforce the rule.

Mr. Sheehan — Mr. Chairman, I move that the gentleman's time be extended by unanimous consent.

Mr. Cullinan — Just a few moments more. See the great States of Pennsylvania, Ohio, Nebraska, Montana, Kentucky, Illinois, Arkansas, all in favor of giving the right of suffrage in their States to every man who is a naturalized citizen of the United States. Now, gentlemen, the capacity to read and write the English language in a polyglot nation like ours, is rather a narrow view to be taken of the naturalization of citizens and in the granting of suffrage. In the empire or quasi-republic north of us, Canada, Sir John Macdonald, in drawing the statutes for that great and growing country said, and as you will observe in the Dominion parliament, that there the debates are in both languages. The laws are in both languages, French and English, and under the circumstances in that country, it is prosperous, it is thriving and no objection is raised anywhere that there should be dual management or operation of government with reference to the use of different language. Now as to the foreign-born American. Why, gentlemen, in the matter of education, he has given the greatest contribution to the United States of any class of people within its borders. Upon the statistics of the last census of 1910, the children of foreign-born parents have the highest percentage of intelligence of any class in the country;

and I rather think that it is to the discredit of what we call the native-born that he falls below the high standards of children of foreign-born parentage. For while the native-born citizen of the United States has an illiteracy test of 3.7 per cent, the children of foreign-born parents have an illiteracy test of only 1.1 per cent, so insignificant that it needs hardly to be mentioned. Furthermore, gentlemen, there arise the circumstances in connection with the great war in Europe and the problems that confront every country in the days of adversity. An emigrant comes to this country. He gets the benefits of our laws; he becomes rich, wealthy and powerful but by reason of not being able to read or write he is not given either suffrage or citizenship. Supposing the flag is fired on, we need that man, perhaps in conscription, or upon a draft, and yet you cannot have him. You have denied him suffrage, you have denied him citizenship; he belongs to a foreign land, and we have lost what might have been an asset in this land by denying him the right of suffrage and the right of citizenship. Gentlemen, I thank you for your kind attention.

Mr. Barnes — There is one angle of this subject which I do not think has been dwelt upon by any of the speakers, nor do I think it is clearly in the minds of the delegates. It was raised by Mr. Marshall when he offered his amendment. His amendment was to strike out the word "English." This would mean, if adopted, that we would present to the people a proposed literacy test, I think that is entirely clear, but that it should not be confined to the English language. The arguments made by Mr. Wagner would, therefore, apply against the amendment offered by Mr. Marshall, as well as to the original proposal offered by Mr. Young.

I am not speaking for the ancestors of Mr. Bell, or the ancestors of Mr. Wagner. I am not interested in any ancestor. There is a point in behalf of this amendment which strikes me as vital. Involved in it is the question of the universality or the nationality of mankind. There are many people in this world who do not believe in nationality, who claim that national existence is error, destructive of human character, and that patriotism is a form of ignorance. That may or may not be true in the future. It is not true now. If you will think for a moment, practically every man in France is a Frenchman; practically every man in Germany is a German; practically every man in the British Isles is English, Scotch or Irish, practically the same; in Russia the same is true; also China and Japan. There is no country upon the earth where so many different-speaking people live as in the

United States. We are not making a Constitution for the United States, but we are about to present one for the State of New York, the largest State in the Union; and, therefore, what the people of this State may do will certainly have an effect upon the minds of the rest of the country. There is no union of people more certain, more complete, than the union of speech. A nation of people who talk different languages can never be a nation that is utterly united. Therefore, it seems to me that if we hold up to those who are about to become voters that they must speak, read or write — whatever the Legislature may determine — the English language. Now, why is the word "English" chosen? I will be glad if we could make it "American." But it is a term. It is a term unrelated to Great Britain; unrelated to Australia; it is a name, simply, of a language. By this proposal, if adopted, we are establishing what would be a State language for the purpose of the unifying of the people. It is to-day practically the State language. It is the language of our Legislative bodies; it is the language of our ballot. We do not have our ballot printed in different languages. The voter who comes to the ballot box, who has not yet learned to speak English does not receive a ballot in a language other than English. He is compelled, in looking at that — or else to follow the emblem — to interpret the language. Now, as a matter of fact, how many men in this State in the course of two years, who do not now know the English language and who may become voters — as this amendment does not touch in voting — will not learn enough English to qualify himself to vote, provided, as Mr. Marshall says, he is already learned in some other language? I don't believe the men of whom Mr. Marshall spoke, particularly those who speak Yiddish, could not learn enough English to become competent under this provision in less than six months' time. They are very able men. Mr. Marshall has frequently told me of their remarkable mental qualifications, upon which he has frequently dwelt, and certainly if they are going to vote a ballot that is written in English, it will not take very much time to meet the requirement of this Proposed Amendment. Therefore, my theory of this amendment is this: That for the purposes of unification of all the people of the State, we simply take this English language, which is the only one we could take — there is not any other — we could not standardize German or Yiddish or French — we have got to take English for this thing so as to hold that up as the language which we must all speak in order that we may all understand each other. That, to me, is the reason why this amendment is wise, and why it is not

restrictive, and does not come under any of the criticisms that Mr. Wagner has made here this morning against it.

Mr. Clearwater — Mr. Chairman, it is very evident that there is a great deal of confusion of thought in this Convention regarding this amendment. It does not deprive, nor is it intended to deprive, any voter now entitled to vote of his right to do so. It only prescribes the qualification of those who shall vote after having been afforded an opportunity of two years to prepare themselves to vote intelligently and properly as American citizens. There has been much confusion here as to what is a proper qualification to immigrate to this country; what is a proper qualification for naturalization, for citizenship, and for the right to vote. This amendment does not debar any foreigner from coming here, nor does it debar him from becoming naturalized, from holding property, from buying and selling, from devising it as he chooses. It simply prescribes a qualification and a condition precedent to his voting upon questions of state, and the selection of the men who shall frame the laws for this commonwealth. I listened with great admiration to my friend, Mr. Marshall, for whom I have a most sincere regard and deep affection, in his eulogy of the race from which he sprang, the race that not only has given the greatest law-givers, the greatest poets, the greatest lawyers of the world, but I go farther, much farther than Mr. Marshall is willing to go, the race that gave us the Saviour of mankind, as I believe. This is not a question of race. Unfortunately it seems impossible to discuss questions of this character without the interpolation of the question of race; but it is, sir, a broad question of public policy, and it should be considered here upon the floor of this Convention, without heat, without passion, without prejudice and without denunciation of the motives of those who offer and espouse it. Now there is no shutting our eyes to the fact that there is a great inundation of the illiterate emigrants to this country and to this State. Some four years ago, I had occasion to collect from the reports of the Commissioners of Immigration of the United States statistics upon this exact question. Now, see what they are: This is a collation from the statistics tabulated by the United States Immigration Commission relating to immigrants over 14 years of age, who came to the United States between 1899 and 1909. During that ten years there came here 7,199,618 foreigners of which but 1,983,618 came from the races of Northwestern Europe. Of the total of this Northwestern emigration only 2.7 were unable to read or write. But there are the races of Southwestern Europe and Asia, who numbered as immigrants 5,215,442, 35.6 per cent. were absolutely illiterate. A more striking evidence of the difference between the two classes of immigration it would be

difficult to present. Now let us analyze this illiteracy: Among the Scandinavians, it was but four-tenths of one per cent; among the Scotch, seven-tenths of one per cent; among the English, one and one-tenth per cent; among the Finnish, one and four-tenths per cent; among the Welsh, two per cent; among the Irish, two and seven-tenths per cent; among the Dutch and Finnish, four and seven-tenths per cent. Among the races of Southwestern Europe and Western Asia the illiteracy among the Roumanians was thirty-four and seven-tenths per cent; among the Croatians and Slovenians, thirty-six and four-tenths per cent; among the Russians, thirty-eight and five-tenths per cent; among the Bulgarians, Servians and Montenegrins, forty-one and eight-tenths per cent; among the Lithuanians, forty-eight and eight-tenths per cent; among the Ruthenians, fifty-one per cent; among the Syrians, fifty-four and one-tenth per cent; among the Southern Italians, including the Sicilians, fifty-four and two-tenths per cent; among the Portuguese, sixty-eight and two-tenths per cent.

Now, no man in his senses will claim that illiteracy is a final test of intelligence. It would be absurd to claim that, but where an entire civilization present such a gross average of illiteracy as is indicated by these very carefully compiled statistics, it is at least some evidence as to this qualification to enjoy the right to assist in electing men who shall make the laws for a commonwealth as great as the State of New York. I say this without any question of race. There is no more Anglo-Saxon blood in my veins than in Mr. Marshall's, for my people were Hollanders and Huguenots, and they have remained so from the time of their immigration two hundred and sixty years ago. But there is a more sinister feature: the State commissioner of lunacy of this State in his publication of statistics shows that of the insane patients in the various hospitals or asylums of this State, forty-one and nine-tenths per cent are alien, and that the ratio of the foreign-born insane during the last ten years, that is the ten years preceding December 31, 1913, it increased by thirteen and four-tenths per cent. In the two great hospitals for the criminal insane of this State, forty-four and four-tenths of the insane criminals are of foreign birth, and last year this State spent $3,290,750 for the care of the foreign-born insane. A very great organ of public opinion said last night, discussing this very question that we were discussing here last night, this — reading from The Sun: " The Bureau of Naturalization does well to make the learning of English the first duty of an alien who wishes to become an American citizen. It is through this medium alone that aliens can acquire a practical knowledge, both in and out of our schools and institutions, which will lay the necessary

foundation for instruction in some simple line of American civics, the duties and obligations as well as the privileges and immunities of which should be an essential of American citizenship." As I say, Mr. Chairman, this is no narrow question. It is one of the broadest, one of the most fundamental, one of the most basic principles of a great State. And, sir, despite the threats of visitation of displeasure of large bodies of men who now vote, it seems to me that the delegates to this Convention should rise above a spirit of mere opportunism; we should be more than opportunists in this Convention. We should never forget that we are framing the organic law, not only for to-day but for generations yet unborn. And the great point with us should be: Frame the laws for a typical American commonwealth, because, if you make this requirement of the man who seeks to elect your legislators and frame your laws, and who will frame future constitutions, they will accept the condition and they will melt in and fuse with the great body of our citizens. Why, consider for a moment across the border in the Province of Quebec, sir, where they have this dual situation, profoundly to the sorrow and regret of both the French and the English. Their preceedings in courts of justice are conducted in a bilingual manner, with a jury half of French and half of English. Every man in public life, in Quebec, English or French, deplores that situation, because the Dominion of Canada, the Province of Quebec, did not, in turn, have the courage to meet the situation as these delegates here have the opportunity and should have the courage. But let me dispel absolutely any notion of race prejudice. It is a great race from which Mr. Marshall sprang, a great race from which my old and dear friend, Judge O'Brien, sprang; a great race from which my great friend Mr. Bell sprang. But this is America. We should all fuse. But how can we fuse if you perpetuate and continue this line of cleavage? No greater line of cleavage possibly could exist than a difference in language — the way in which one man indicates to another his ideas and his thoughts.

Mr. Wickersham — So many gentlemen desire to speak on this subject, that I think we might very reasonably ask a slight extension of time. I move that the Committee rise, report progress and ask leave to sit further on the subject until twelve o'clock, the final vote to be taken not later than twelve o'clock. In that same connection, I understand that Senator Wagner's speech was cut somewhat short, and I move that, in making the report, the Committee ask that he have leave to print in the Record the remainder of his prepared speech on the bill.

The Chairman — All those in favor of the motion will say Aye. Contrary, No. It is carried.

(The President resumes the Chair.)

The President — The Convention will come to order.

Mr. Stanchfield — Mr. President, speaking for the Committee of the Whole, we desire to report progress and ask leave to sit again.

The President — All in favor of granting leave will say Aye. Opposed, No. The leave is granted.

The President — It is moved that the time allotted to the special order relating to the literacy test be extended, under the same limitation as to individual speeches, until twelve o'clock noon, and that the vote upon the proposed amendment to the Constitution be taken not later than that hour. All in favor will say Aye. Contrary, No. The motion is agreed to and the request is granted. The Convention will now return to Committee of the Whole for the consideration of the Special Order of the day. Will Mr. Stanchfield resume the Chair?

(Mr. Stanchfield resumes the Chair.)

The Chairman — The Chair recognizes Mr. Parsons of New York.

Mr. Parsons — Mr. Chairman, Mr. Young in his speech last evening claimed that the percentage of illiterate voters in this State is 5 per cent. He based his claim upon the census figures. But the census proves no such thing. The figures he gave are not figures of illiterate voters. For instance, he claimed that in the State of New York there were males over twenty-one years of age, having the right to vote, who could not read or write, to the extent of 170,030; that of those there were 91,815 in the city of New York. Now all those census figures mean is that there are that number of males twenty-one years and over, but it does not mean that they are naturalized. Now, he further claimed that in the Sixth Assembly District there were 3,443 illiterate voters. Nowhere are there any facts to sustain that proposition. The number of males twenty-one years of age and over in that Sixth Assembly District were 27,398. Of those, 3,443 were illiterate. The number of naturalized was 5,445. Now, if you deduct from the 27,398 the 3,443 who were illiterate, you have there 23,955 from which you deduct your 5,445 who are naturalized. That means there were four times as many literate voters, voters who could read and write, in the district, as there were voters who had been naturalized. The registration in that district was 6,280. There were more than three times as many men of twenty-one years of age and over in that district who could read and write as there were registered. So you can make no deduction to the effect that the votes cast in that Assembly district were cast by illiterate voters. Now, I am sustained in this by a letter which I have from the Director of the Federal Census, to whom I wrote

after receiving Mr. Young's letter of July 23d. The Director of the Census in a letter dated July 29th, says: "Of the 25,854 foreign born white males twenty-one years of age and over in 1910, in the Sixth Assembly District of New York county, 5,445 were naturalized, but the number of such who were illiterate is not available, as the tabulations of illiteracy and citizenship were not correlated." Now, let me call attention to what happened in the Sixth Assembly District in the election of 1913 when Mr. Sulzer was elected to the Assembly. If there was anything in the point that independent voting proves intelligence, then, the Sixth Assembly District has a splendid record. In that regard in the year that Mr. Sulzer was elected to the Assembly, the Republican candidate for alderman was elected by a plurality of 600. The Republican candidate for Court of Appeals carried the district by a substantial plurality. And, I want to say to my Republican friends from up the State that the Sixth Assembly District is the bright Republican spot on the East Side of New York city, and I very much regret that my distinguished friend from Westchester county should have been so unwise as a loyal Republican as to suggest that half of the voters in that district were illiterate.

In 1904 that district elected a Republican Assemblyman for the first time in twenty-eight years, and since that time it has been as consistently Republican as any district in New York county, and to-day we are asked to vote into the Constitution this provision because the voters in that district are illiterate. Now, why should they vote for Sulzer? I notice in his speech, Mr. Young did not give all that he had given in his letter of July 23d, which he sent around to the delegates. He said, "male illiteracy is five per cent. Such a body of men compel the nomination of such men for Governor as William Sulzer at times." Now, really, does he think that the illiterate voters of New York compelled the Democratic party to nominate William Sulzer for Governor? Does he really think that the illiterate voters have so much power with Fourteenth street that they can compel the great chief to nominate some one whom they select? Why, I know he has more respect for the Democratic party than that. Now, I want to explain to you how the Democrats go about it, and how they went about it in the case of Sulzer. They are very far-seeing. Here was a man who had been eighteen years in Congress. They were going to nominate him for Governor. Did they appeal to people on ignorance? Why, no. They put before them the printed page, telling the people, apparently from disinterested courses, what a noble man Sulzer was. I have in my hand a volume entitled "Sulzer's Short Speeches," published in

1912, before the campaign of that year. Now, I see back of this the clever hand of Tammany Hall. It says, "Short sketch of William Sulzer, by George W. Blake, of the New York Times." Of course, the Democratic party chose some one connected with a disinterested paper like the New York Times to bring before the people the man they were going to nominate for Governor, and what does Mr. Blake say. In a short sketch of William Sulzer, he says — Perhaps it was suggested to him by our clever and genial friend, the secretary of Tammany Hall. He says: "There are two distinct types of men in public life to-day, one who is constantly in the limelight because of 'grand stand plays' and their ability to sound their own trumpets, or getting their friends to do it for them; the other those that 'do things,' but who are too modest to speak about them, being content to let the records they make speak for themselves. To this latter class belongs William Sulzer." And then he goes on, "Mr. Sulzer has always been a very modest man concerning his own achievements;" and then again, "It is known that Mr. Sulzer is not personally desirous of being a candidate." Now, that reason contains very ample excuse for the people in the Sixth Assembly District in 1913, to vote for William Sulzer for assemblyman, especially on the part of those who could read English because this could only appeal to those who could only read English.

Mr. T. F. Smith — Mr. Parsons, are you acquainted with the author of that effusion?

Mr. Parsons — I understand he is a deserving Democrat who landed later on.

Mr. T. F. Smith — You are misinformed.

Mr. Parsons — I don't think I am.

Mr. T. F. Smith — Don't you know he is a Republican?

Mr. Parsons — No, I don't. When I first knew him he was a very deserving Democrat.

Mr. T. F. Smith — Don't you know that he was a resident of the district of which you were Republican leader?

Mr. Parsons — I do not.

Mr. T. F. Smith — And that he was one of the important factors in the Fusion campaign of 1901?

Mr. Parsons — Well, I would hate to believe that he was.

Mr. T. F. Smith — That he was rewarded by being made secretary to the president of the Borough?

Mr. Parsons — Well, the president of the Borough was a Democrat, and he is now a Democratic member of Congress.

Mr. T. F. Smith — Well, he is a Democrat-Republican.

Mr. Parsons — I don't know about that.

Mr. T. F. Smith — If you don't know it, I can say to you now that he has always been an Anti-Tammany man.

Mr. Parsons — Well, he at least proved himself to be a deserving Democrat, and, of course, at the time he wrote this book I suppose he had no expectation of being appointed to office. Now, what I want to say is this, in conclusion, that here in the Sixth Assembly District is a man that the Democratic party had persuaded them to vote for nine times for Congress. They had flooded the district with his speeches. I am not going to read them, because the people might misunderstand what Mr. Blake wrote about his modesty when they notice the number of times that the first person singular is used. But, there, what were these people to do? They had elected him Congressman a great many times, the Democratic party nominated him for Governor, and then he was still the same "Same Old Bill." They put him out, and the Sixth Assembly District said, "Why, we know he is the Same Old Bill, and you know he is the Same Old Bill, and so we will send him to the Assembly."

Mr. Mann — The underlying motive of this whole discussion, Mr. Chairman, seems not only to have been the idea to increase the intelligence of the voters, or to enhance the advantages to the State by a literacy test, through which we might procure a better class of voters, but if we observe the statements that were made by Mr. Bell and by Mr. Young in their advocacy of this measure, we find that there are covert attacks, not only upon the Yiddish speaking people, as Mr. Marshall seems to have thought, but practically upon every nationality that has come to this country outside of the English, and particularly is there an inferential attack contained in the remarks of Mr. Young when he says, "At this moment in this country we are confronted by a situation such as never before has confronted us. We are confronted with the possibility of war with a power many of whose people are in this land at this time, and these people who have not yet learned the English language and who are reading papers in sympathy with this foreign country are a menace." Let me say, Mr. Chairman, that he could not have meant the English people, he could not have meant "The All-Lies" or the Allies; but he evidently had in mind the German nation or the German speaking people. I want to say, and I mean not to attack any nation or any person, that the German speaking people of this country who are voters are not illiterates, and not only can they speak and read and write the German language, but they can read and write the English language as well, and in my judgment as fluently as Mr. Young or Mr. Bell or any of those who have made any attacks upon them. As a matter of fact, I am very proud myself to be a descendant from the German race and I never was so proud of my ancestry as I have been during the past year in observing the

achievements of the nation from which my ancestors sprang. I want to say that literacy is not one of the failings of the German race, but it is one of their attributes. There is in Germany hardly a fraction of 1 per cent. who cannot read and write. I do not think the same can be said — I don't want to say anything disparagingly of the English speaking people or rather of the English race, but the fact is, that the illiteracy in England, as I am informed, amounts to over 10 per cent — about 20 per cent. Another thing: The Germans who come to this country, statistics show us, become citizens of the United States to the extent of about 84 per cent. The subjects of Great Britain — I mean of England, not Great Britain, since the Irish and Scotch come here, mostly all of whom become citizens of the United States, but those who come from England directly — I am informed that only about 23 per cent. of them become citizens of the United States. So that we need not fear that they are going to have any very potent influence upon the governmental affairs of this State since so few of them become citizens and become voters. I might say for the benefit of Mr. Bell, who in his pro-English argument insisted that we were all Anglo-Saxons, and that the traditions of the English race were inherited in us and we ought to continue them to the exclusion of the traditions of any other race or nation —why, he probably does not remember that King Edward himself could not talk English without a German accent. That is proverbial and known. As a matter of fact, the English rulers are all descendants from the Germans and it seems to me that if there was any lack of intelligence on the part of any of the voters of this country, that lack of intelligence might have been manifested or probably was manifested in the district of New York, and the upper district, where Mr. Bell came from.

The Chairman — The Chair announces that the gentleman's time is up.

Mr. Mann — I will conclude, then. I simply want to say there was really some merit to the proposal of Mr. Young, and I discussed it with a number of delegates who believed it had considerable merit to it, but after the statement made by Mr. Young contained in this attack and by the statement of Mr. Bell when he rang forth — pealed the death knell of that particular measure, I believe that from that time forth there was not an opportunity to pass the measure in this House. And, under the circumstances, I feel that because of these attacks, this discussion has become acrimonious and has really not gone to the merits of proposal so much as to attacks upon the various people who come to this country. I have no sympathy with the measure and I hope the rest of the delegates will not have.

Mr. Olcott — Mr. Chairman and gentlemen of the Committee: My attitude in this matter, if I may be permitted to indulge in a kind, if critical, bit of personality, is not that of Mr. Bell. I do not think this is an Anglo-Saxon country at the present day, or that any of the other nations of the earth is less welcome to us, if properly introduced, than the English nation; nor do I agree with Mr. Marshall, except in the situation in which we both find ourselves, for, like Mr. Marshall, I have not a drop of English blood in my veins. My ancestors came from Holland on both sides of my family, but as soon as they got here, I am happy to say, they learned the English language, making it easy for their posterity to assimilate the language and the tenets and education of the country. It cannot be possible, Mr. Chairman, that we can have much sympathy with Mr. Marshall's proposition that we shall have a literacy test, but not in English, because it does seem to me that whether they be Mr. Marshall's Yiddish ancestors or my Dutch ones, or the ancestors of any of us, who came to this country with a knowledge permitting them to read and write their own language, it does not seem to me, I say, that to such as those there can be much difficulty about learning the American language, as we love to think of it, within two years. I say two years because this proposition of Mr. Young proposes to start this thing on January first, 1918; but two years, you see, is the minimum, because for everybody hereafter coming to this country, he will have five years within which to learn to read and write the English language, because it takes that length of time to earn his vote by way of citizenship, naturalization. So what does the thing resolve itself into? Not, I protest, the old know-nothingness; the shibboleth of that creed was "America for Americans"; but this is founded on a broader principle than that, a more magnificent charity, a more cosmopolitan thought, "America for everybody"; and so we welcome without restriction, even of education, except that they must be able to talk some English, the immigrant from all countries. And then we say to them for two purposes — and I want to emphasize the duality of this question as it appears to me — we say to them for two purposes, you shall before you vote learn to read and write in the tongue of the land and I may say that we only say the tongue of the land because that is the most convenient. If it were desired to get away from the name "English"; those who are pro-Germans and not Anglo-Saxons, it would be a pity, as Mr. Barnes says, if we could not think of it as something else but the English tongue. That is the name of it.

Mr. Marshall — Isn't it a fact that in several bills presented to Congress which sought to create the literacy test with regard to

immigration, it was provided that the immigrant might be admitted if he was able to read any language, and especially mentioned Yiddish?

Mr. Olcott — Yes; that is true. But, you see, it seems to me a quite different proposition, because the converse of that proposition, Mr. Marshall, if I may call your attention to it, would mean a man would have to be educated in English before he comes here, and that nobody thinks of who regards this nation as a nation holding out our arms open to anyone who wants to seek the liberty and protection of its shores and government. But after they get here, as I say, haven't they time, and isn't it reasonable to ask them to learn the English language, and for two reasons, as I started to say: First, because that certainly would be an increase of literacy, I could not quite follow the suggestion born of his statistics made by Dr. Schurman last evening, and I am sorry he is not here to-day, because I wanted to ask him about it,— I could not quite follow what he meant as to the figures as to Vermont and New Hampshire, but surely, deceptive statistics aside, everybody knows that if this makes for anything along that line, it makes for literacy, because certainly some people are going, if this proposition were passed, to learn the English language, and therefore become more literate, because that would be the only way to get the right to vote. But the second proposition is — and I must hurry, because I think it is the most important, and I have only a few moments left of my time — Americanism. That seems to me to be much the more important thing. Let people learn to read and write the American language and they will learn to think in it, or at least it will leave open to them all the patriotic writings which are in that language. I do not in the least doubt that there is patriotism printed in Yiddish and patriotism printed in German, in Italian, in the newspapers of all of those races, but surely there is some patriotism that they can read in English that even the patriotic Yiddish newspapers and the patriotic German newspapers have not got.

Now think of the breadth of influence of that, which would seem to sustain my argument and yet upon which I do not wish to base much of my thought, because I think it must be exaggerated. I read in last evening's paper that a man who has the distinction and the individuality to be a practicing lawyer in New York city has just come back from Germany and said that, if war was declared against Germany, he knew of a hundred thousand Germans, members of his society, who would not enlist against the Fatherland because they would judge it to be an unjust war. That man is named Alphonse G. Koelble, a lawyer of New York city, whom I know very well. I do not in the least believe him. Don't let my

friend Mr. Mann or any of the other Germans in this Convention answer me that it is not true. I know it is not true.

Mr. Marshall — Has not the gentleman to whom you have referred the ability to speak, to read and to write the English language?

Mr. Olcott — Certainly.

Mr. Marshall — Is his patriotism or lack of patriotism due to or at all affected by his literacy or lack of literacy?

Mr. Olcott — I think not, perhaps, in his case. But you will hardly deny that there will be fewer of those people whom he claims to number a hundred thousand than there are if they should read the English papers instead of the German papers.

Mr. Mann — Don't you know as a fact that every man who reads a German paper does not read it because he cannot read English but because it is the only source of truth that he gets about the war in Europe?

Mr. Olcott — I am admiring the cleverness of your inquiry, Mr. Mann, but I think that you do not wish an answer to it.

The Chairman — The gentleman's time has expired. The Chair recognizes Mr. Landreth of Schenectady.

Mr. Landreth — Mr. Chairman, I desire to say simply a word against the Marshall amendment and in favor of the general amendment. I yield to no one in high respect for Mr. Marshall. I believe he represents a noble race. I do not believe that he accurately expressed the sentiment of that race last night, however, when he said that to enact this amendment into law would be an insult to a million of the Hebrew people. It is my fortune, and I think my good fortune, to come in contact with a large number of young people of foreign parentage, many of whom are foreign born. It has been my almost universal experience that those young people consider their American citizenship to be an honor. They aspire to it. They leave nothing undone which will enable them to become closely affiliated with the American nation and with the State. I cannot understand, therefore, how, with that sentiment, which is almost universal in the minds of the young foreign people, there can be any suggestion of insult when this reasonable requirement is made.

There is one point which should be brought out clearly and that is the fact that this addition to the elective franchise is supplemental to our public school system. Our public education goes to the training of young people only, and there is no suggestion that young people who pass through our schools are in need of this requirement. They can all read and write the English language, among many other qualifications, so that this requirement is not directed at all to the young people who pass through our schools. It is directed to the foreign immigrants who have come to our

shores after passing the school age, and therefore this should be considered as supplementary and not as parallel. Now, Mr. Chairman, there has been objection raised to the word "English" in the amendment. Mr. Marshall's amendment goes to the striking out of the word "English." Now, the words that he would accept are the ability to read and write in any language, as meeting fully every requirement. I do not speak as an Englishman. My blood contains a large contribution of English blood, Irish blood, of which I am proud, some German blood and a lot of old-time Yankee blood. Therefore, I can speak without bias. I do believe that our national language should be respected. Whether we call it English or American, I do not care so much. It happens to be English. It might, by an accident of history, just as well been French. Whatever it is, it is the national language, it is the official language, and it should be recognized. No matter how fully our voters are able to express themselves, to understand their own language, they should, as a supplementary requirement, be expected to read the English language. As Mr. Young pointed out, it is the only language by which they can get immediately in touch with patriotism. It is the real language. I was very much surprised that the eminent chairman of the Committee on Education thought it adequate to base his argument against this amendment on a comparison of statistics in a case where the values were so closely similar as to be readily accounted for by the usual and expected errors in statistical data. Dr. Schurman compared the States of Washington, Oregon, California and Maine, where the decrease in illiteracy had been between 1 and 2 per cent., with the State of Vermont, where the decrease had been 6 per cent. Now, clearly, we can only draw a comparison where everything else except the thing compared is identical and similar. Dr. Schurman made that clear in his preamble. Does anybody suppose that the States of Washington, California, Oregon and Maine are similar to the State of Vermont? Does he not know, as of course he must, that in all the States, even including Maine, there was during the decade he mentioned a large increase in population, immigrant population, whereas in the State of Vermont there was almost none whatever? Had Maine or Oregon simply been confined to their native-born population, the population that had gone through the schools, of course, the decrease in illiteracy would have been far greater. In Vermont there is almost no immigration and consequently the natural result of the schools is evident.

Mr. Franchot — I will restrict my remarks to a very few minutes. It occurs to me that, in order to think clearly, and vote correctly upon this subject, it is necessary to divorce the issue presented from the many irrelevant considerations which members

have sought to inject into it. If this were a question of race, a question of the assertion of the superiority of Anglo-Saxon blood, I would have to join with Mr. Marshall in his reprobation of the sentiments expressed, because I am another of those in favor of this measure in whose veins there courses very slight, if any, Anglo-Saxon blood. The question of race is beside the point. The question of whether or not we shall accord a refuge to the oppressed of Europe is beside the point. The question of whether or not we shall accord, under certain conditions, or other conditions, the right to become citizens of this State is beside the point. The only question here is whether, as a matter of good government policy, we should prescribe that those who in the future shall gain the right to vote shall have an elementary, a minimum acquaintance with the language in which is couched the phraseology of our institutions, the language of this country — not of England but of this great commonwealth. Now that question resolves itself into two questions: First, is there any necessity for the protection of the right of suffrage by the requirement of that minimum, elementary acquaintance with our institutions, our traditions and the structure and framework of our government? Gentlemen have said there is no need; that the naturalization test is all that is necessary or required. I think I am safe in assuming, Mr. Chairman, that gentlemen who make that assertion have very seldom, if ever, attended naturalization courts as they are conducted at this time in this country, because, if they had, they would have seen individuals admitted to the full right to join with us in the government of this country who demonstrated upon their examination a total failure to appreciate even the simplest and most elementary facts with respect to the system of government into which they were admitted to share. The gentleman from Tompkins, Dr. Schurman, claimed that this great State of New York — this is his exact language: "There is no reason for anxiety with regard to the capacity of this, the greatest State in the Union, to assimilate all that come to us without resort to a measure of this kind." The question is not whether the State of New York will come to destruction if you fail to adopt this measure. The question is one of policy, as to whether, by adopting this measure, you will do what you can to aid in that process of assimilation. Now, the second proposition is whether or not the requirement of the ability to read and write the language of this country will aid in that assimilation. I listened with great interest to the eloquent address of Mr. Marshall with respect to the existence of a segregated, separated class of citizens in Greater New York who have chosen, by the preservation of the use exclusively of a particular foreign language not to identify themselves with our institutions.

Mr. Marshall — I made no suggestion that they segregated themselves or that they separated themselves. I merely indicated that they were getting their information through a certain press and that they are reading very largely in a certain language, but they speak the English language. The only trouble is on account of a difficulty surrounding them, they have been unable to learn to read the English language. That is the only point that I make.

Mr. Franchot — Mr. Marshall, in answer to your statement, I should say that to my mind the fact that they have chosen to gain their knowledge of our institutions, of our methods of government, through the medium of a foreign language, when by your own say-so, as I understand you, they are people with ability to learn the language of the people of the country in which they are dwelling, that fact is a misfortune. Gentlemen of the Committee, you may differ with me in respect to this question, but this is the only question that I can see that is involved in this discussion: whether it will aid in the assimilation, whether it will aid in the proper comprehension of our institutions, whether it will aid in a due appreciation by those whom we admit to help us govern ourselves, that aspirants for the right of suffrage should gain their ideas through the language which has accompanied the growth of our institutions, the language which is almost essential to the due appreciation of those institutions. If you think that that will aid in such an assimilation into our midst you cannot fail to vote for this amendment.

Mr. M. J. O'Brien — Mr. Chairman, I am not going to take much of the time of this Convention, for most of what can be said on either side has been very well presented and in a forcible way, but just as the distinguished gentleman from Albany presented a view which perhaps might be differently phrased, I take the liberty of calling the attention of the delegates of this Convention to the fact that there is no crying need for this proposal which has been submitted here. This country has grown from less than five million to one hundred millions of people, and when they get strong in certain directions, as they have in a few States, they throw aside the policy which has built up this country and they enter upon — there being no abuse suggested or evil to be righted, they attempt to mar the policy which has brought about the splendid development of our country. It has never been in our nation a question of education. Our citizenship has been built up on character and a bad man with education is worse than a bad man without education, and it is conceded that a good man without education is the peer and superior of a bad man with education. Our citizenship therefore having been built up in the past by those who came from every country under the sun, why

should we change, and what is the demand now for a change in this policy? Does it say that in the past it has worked injury? But it is suggested that it may in the future. I suggest to those gentlemen who have fears about the future that when problems have confronted us which needed remedy, we have always met them. We have no such problem now and I need not say to you who are here that taking the large immigration with which I am most familiar many of the men who came here in the early days that immigration is no longer large, who came from Ireland, those men could not write the English language, many of them; many of the soldiers — and we always treasure that tribute of Washington, who in that great campaign closing at Valley Forge said that there was a larger percentage of Irishmen in the Revolutionary Army than of any other nation upon earth outside of the men of America. I have not the statistics of how many of those men could read or write the English language but the reason why I think they could not was very simple: in their own country they had the tyranny of misrule over them which prevented them from getting the education and they were forced to immigrate here. They could not get it there without the sacrifice of their love of liberty and conscience; but when they came to this country full of the love of liberty and conscience and love of freedom, on every battlefield beginning with the Revolution and down through the years these people have been found shoulder to shoulder with those who came earlier and were earlier residents of this country. How many of us have known men among the first generation of immigrants who came to this country, who could not read the English language, men who by industry have provided for their families and in competition even with our American labor — take many of the foreign laboring class who have come here and got homes and by industry and thrift have got a foothold on our soil, the most secure of all footholds, which is ownership in the land itself, as against them you would have discriminated by a proposition of this kind and without any resulting good. I submit, Mr. Chairman, that this proposal, not meeting any present evil, should not receive the favorable consideration of this Convention.

Mr. Shipman — Mr. Chairman, I would like to speak on this in view of what has been said here from the Anglo-Saxon standpoint. I have here before me the Declaration of Independence signed by one of my collateral ancestors, and I have here also the Constitution of the United States which one of my direct ancestors signed, and in the States of Virginia and Maryland we have no foreign population whatever. Now, that we should make a test that a person should know English, that he should be able to read and write the English language, is absolutely unnecessary.

We have lived in this State for 125 years or more without any such tests as that and we are at the forefront of the whole American people. There is no occasion for having us go further; and as for what has been said here that the English language is necessary, absolutely necessary as a unifying force, I absolutely deny it. The oldest republic in the world does not use one language. It has lasted for 700 years, and they speak three languages there and each one has a parity with the other — the Republic of Switzerland, where French and German and Italian are used all the way through, and they are Swiss all the way through; there are French-speaking Swiss; there are Italian-speaking Swiss, and there are German-speaking Swiss. Therefore, one language is not necessary to go to the polls with. If we know American history, American patriotism and knowledge of what our country is and what the candidates for office should be, that is all that is necessary, and I cheerfully coincide with Mr. Marshall that the word "English" be stricken out. It gives a false coloring to the whole amendment. If a man is able to read and write and capable of absorbing information, that is all that the State needs. I speak of that particularly because of having been connected with educational matters. Now I speak also for another race, which has been spoken of in rather a disparaging tone, and that is the great Slavic races, the Ruthenians, the Poles, the Slovenians, and the Slovak. I am acquainted with their press. I have attended their conferences, and let me tell you they are carrying in every one of their year-books and papers a history of the United States, a translation of the Declaration of Independence, the Constitution of the United States and a translation in large part of the Constitution of this State. More than that, they are giving civic lectures in their schools. I know of one organization which regularly borrows from the Department of Education photographic slides treating upon the government of the city of New York, and they carry in their own meeting the very lectures that are given in the public schools throughout the city of New York. Now, gentlemen, these people are getting a knowledge of our country, and of our politics, and of our requirements. Having compulsory education in this State so far as their children are concerned, that will be cured, because they must attend these schools and aside from them every child has to get a place and he must get English, so I say that part of the requirement is absolutely unnecessary.

Mr. A. E. Smith — Mr. Chairman, I just want about a minute to touch upon a point that I think has been entirely overlooked by the speakers against this proposition, and that is, that the limitations upon male suffrage in this State have been put into

the Constitution only for a single purpose, the single purpose of preventing fraud. It was on the theory that upon the sanctity and purity of the ballot rested the success of our free institutions that they saw fit to safeguard, so far as they possibly could in the constitutional law. Now, this is not a new proposition. It was introduced in the Convention of 1846; again in 1867; and in 1894, and I am informed by Mr. Nicoll that in 1846 it was regarded somewhat as a joke, and one of the members with a sense of humor offered an amendment to the effect that the proposed voter should be able to read and write the English language, "fluently", and every member offered some kind of a similar amendment, all intended to make the thing as ridiculous as it could be made at that time. In 1867 it was treated somewhat similarly. In 1894 it was never accorded the floor of the Convention. There should be nothing of this kind put in the Constitution unless somebody can show the majority of the Convention that the State is going to benefit by it. Nobody has shown that. The argument has been made that it might reduce illiteracy. I cannot see it from that angle. I can see on the other side a lot of damage that can come by the adoption of this. Now, you men who stood on this floor here a short time ago and spoke of the danger to our government that came from privilege, be careful that you do not write into the Constitution the very privilege that you would deprive, as being against the American idea. I do not know any better food for the Socialists and the Anarchists or any better thought that the Socialist can have in his mind and shout from the street corners, that goes to the foundation of the State and the dissolution of the Union, than to be able to point to the fact that a man owning property, participating in the benefits of the government and upholding the government, is refused a voice in the management of that government through the ballot, simply because he cannot read English. We have sent one Socialist Congressman from this State, one Socialist is sitting in the Congress of the United States from this State, and the reason it took them so many years to elect one is because we have by their constituency taught them that all men are equal in this State, that they have the same opportunity and the same chance with their neighbor. During my membership in this house, a Socialist from Schenectady sat on this bench and when he found that the debate was open, free and unrestricted and he was enabled to participate absolutely freely in the discussions that came before the Assembly and he found that seventy-six votes and seventy-six only did anything in this chamber, he went immediately down to the Ten Eyck barber shop and got a hair-cut.

Mr. Barnes — Mr. Chairman, a point of order. The hour of twelve o'clock has passed by five minutes.

The Chairman — The point of order is well taken. The time limit has expired.

Mr. A. E. Smith — Mr. Chairman, I wish the gentlemen from Albany had let me get out of the barber shop, I don't like to finish there.

The Chairman — The Chair desires to state that the gentleman from Albany will allow the gentleman from New York time enough to get out of the barber shop.

Mr. Barnes — Mr. Chairman, inasmuch as it is five minutes over the hour, of course, if the gentleman desires a matter of two minutes more, why of course, I have no objection.

Mr. A. E. Smith — Just a second more. It came under my personal observation just what this does to the man: In 1908 or 1907, there was written into the Election Law a provision that in New York city or the Metropolitan district, a man had to sign his name when he came to register. I opposed that very bitterly, in this House. I watched its operation and it was a surprise to me to see the number of men who were able to speak the English language, that were not able to write their names in English. Some of them were fathers of families. One I have particularly in mind whose son is as bright a lawyer as any practicing at the bar in the city of New York to-day, and I would not advise him to take his hat off to anybody, and his father struggled through the long days and nights to educate the son and the rest of the family and he was not able to read the language, although he fluently spoke it. There are a lot of good readers and writers residing down in Mr. Osborne's Riverside neighborhood that can not only write their own names but somebody else's as well.

The Chairman — The Committee will come to order and the clerk will read the amendment offered by Mr. Buxbaum.

Mr. Olcott — Mr. Chairman, there are two Committees in session at present, would it be desirable, as I think, to send for them prior to taking a vote? I am sure there are some members there who would like to vote.

The Chairman — The sergeant-at-arms will notify the respective Committees that we are about to vote. The clerk will read the amendment.

Mr. D. Nicoll — Mr. Chairman, I rise to a question of privilege.

The Chairman — Mr. Nicoll is out of order until the amendment at the desk has been stated to the Committee. Then the Chair will recognize him. Mr. Buxbaum moves to amend by striking out the enacting clause.

Mr. Buxbaum — For the reason, Mr. Chairman, stated by Judge O'Brien and Mr. Smith and further for the reason that

there is no necessity for this amendment at this time, that it is impolitic and no demand for it in the State, I move the adoption of this amendment.

The Chairman — The Chair will now recognize Mr. D. Nicoll, for the purpose of stating his question of privilege.

Mr. D. Nicoll — Mr. President, I have listened with great interest and admiration to the remarks of the members upon their ancestors, by Mr. Marshall, Judge Clearwater, Mr. Olcott, Mr. Shipman and other delegates, who have spoken upon this amendment. This seems to me to be as near as we shall ever come to Ancesters Day, in the Constitutional Convention. And, therefore, I utilize this opportunity to correct a reference or a mistake made by the author or compiler of the Delegates' Manual in reference to my ancestors. I have now signed one hundred and forty-five copies of the Delegates' Manual and have appended my signature to page 338, to the obituary of myself, prepared by the Secretary of State. In that account these words appear: "He is descended from Sir Richard Nicoll, the first English Governor of New York, who was also Mayor of the city of New York 1671." Now, I have no objection whatever to being descended from Sir Richard Nicoll. He was the commander of the English Expedition which captured New Amsterdam from the ancestors of Judge Clearwater and Judge Olcott. And I should be exceedingly proud to be able to say to this body that I was descended from him. It is a matter of no importance to me that he was never mayor of the city of New York; he was certainly the first Governor of the province. But the difficulty is, gentlemen, that Sir Richard Nicoll was a bachelor. And I most seriously object to the Secretary of State putting the bar sinister on me. I have long desired to make this explanation to the gentlemen who have obtained my signature to this notice in the Delegates' Manual.

The Chairman — The Chair recognizes that the question of one's own legitimacy is a question of the highest personal privilege.

Mr. Brackett — Mr. Chairman, I only wanted to inquire if there ought not to be a thousand additional copies printed of this gentleman's speech.

The Chairman — The question before the committee is upon the adoption of the amendment proposed by Mr. Marshall which is to strike out the word "English" from the amendment under discussion. Are you ready for the question?

Mr. C. H. Young — I ask for a division, Mr. Chairman.

The Chairman — A division is called for. All in favor of the amendment as offered by Mr. Marshall, striking out the word

"English" from the amendment will rise and remain standing until they are counted. The gentlemen will be seated. All those opposed will rise. The delegates will be seated. The Clerk will announce the result.

The Secretary—Ayes, 49. Noes, 64.

The Chairman—The amendment is lost.

The Chairman—The Chair will put the amendment introduced by Mr. Buxbaum. The question now is upon the amendment offered by Mr. Buxbaum striking out the enacting clause. A rising vote is called for. All in favor of striking out the enacting clause will rise.

The Delegates will be seated. Those opposed, will rise.

The Clerk will announce the result.

The Secretary—Ayes, 61. Noes, 61.

Mr. Wadsworth—I ask for tellers.

Mr. Wagner—In that case, Mr. Chairman, the Chair decides.

The Chairman—The gentleman from Livingston, Mr. Wadsworth, has the floor.

Mr. Wadsworth—I ask for tellers, Mr. Young on one side and Mr. Buxbaum counting on the other.

Mr. Wickersham—Word came to me a moment ago that a number of gentlemen are in the Cities Committee. The word came too late to send for them. I move a reconsideration of the vote, and that the sergeant-at-arms be requested to summon the members of the Committee from the Committee room, in order that they may participate in the vote.

Mr. Wadsworth—If you will appoint the tellers that will give time to send for those gentlemen.

The Chairman—The sergeant-at-arms will summon the gentlemen from the Committee room.

Mr. Barnes—Mr. Chairman, as a matter of facilitating business, is not the motion lost to strike out? Being a tie, does not that lose the motion?

Mr. F. L. Young—A point of order, Mr. Chairman. If the amendment was not carried, it was lost.

Mr. Wickersham—I had a motion to reconsider which has not yet been put.

Mr. Wadsworth—I think I demanded tellers before the Chair announced the vote.

The Chairman—The gentleman from Livingston, the Chair holds that motion is not in order, and recognized the gentleman from New York, Mr. Wickersham, with a motion to reconsider the vote.

Mr. Barnes—Mr. Chairman, a point of order.

The Chairman—The gentleman from Albany will state his point of order.

Mr. Sheehan — The gentleman from New York, Mr. Wickersham, cannot make that motion, because he voted the other way.

The Chairman — The Chair holds that the point of order made by Mr. Sheehan is well taken.

The Chairman — The Chair recognizes the gentleman from Albany, Mr. Barnes.

Mr. Barnes — Inasmuch as this motion is to strike out the enacting clause, and as the vote was 61 to 61, I assumed the Chair would declare it lost, and would then vote upon the merits of the proposition itself. That was the reason why I raised the point. We would have to have another vote anyway.

Mr. Quigg — The Chair might vote.

Mr. Brackett — Mr. Chairman, I make the point of order that, there being no vote, that is, it being a tie vote, the motion is lost.

The Chairman — The Chair has declined to so hold.

Mr. Wagner — Mr. Chairman, I would like to first say this, that while the Chair held the point of order well taken made by Mr. Sheehan, there is no roll call in the Committee of the Whole, so there is no record as to how the individual member voted, and the Chair only is in a position to decide, when there is a record of the vote. Secondly, where there is a tie vote, under all parliamentary procedure, the Chair has the deciding vote.

The Chairman — The Chair entertains the motion made by Senator Wagner of New York, to reconsider the vote by which the amendment was declared lost. All those in favor will signify by saying Aye, contrary, No. It is carried.

Mr. Barnes —A division. I don't get the motion.

The Chairman — The amendment is again before the House.

Mr. Brackett — I make the point of order that there was no vote that could be reconsidered. It was a tie vote. There was no majority one way or the other. It simply stands that the question was lost, not by a majority vote, but by a tie vote.

The Chairman — The gentleman is out of order. The Chair declared upon a tie vote that the amendment was lost; as he understands he has parliamentary right to do. A motion was thereupon made to reconsider the vote by which the amendment was lost, that motion was put to the Committee and carried, and the amendment is now before the House for further action. That amendment is to strike out the enacting clause.

Mr. C. H. Young — Is this motion to strike out the enacting clause yet before the House?

The Chairman — It is now before the House pending action. A division is called for.

Mr. Parsons — I ask whether it is not in order to have tellers: in the case of a very close vote, that is the custom in many legislative bodies, and the course to be followed would be to have Mr.

Young and Mr. Buxbaum take their places, and first those in favor pass through and then those opposed; and then there is no difficulty about it.

Mr. J. G. Saxe — I move the point of order that tellers are never in order in Committee of the Whole.

The Chairman — The Chair is not informed as to any rules contemplating the appointment of tellers.

Mr. Mereness — In the Constitutional Convention of 1894, we frequently had tellers, Mr. Chairman, in Committee of the Whole.

The Chairman — The Chair was not in the Convention of '94. He is deciding upon questions as they arise in this one. The question now before the House is the striking out of the enacting clause, and a division is called for. All those in favor of striking out the enacting clause will rise. The delegates will be seated. All those opposed will rise. The delegates will be seated, and the Secretary will announce the result.

The Secretary —Ayes, 62; Noes, 70.

The Chairman — The amendment is lost.

Mr. C. H. Young — I move the adoption of the amendment and that it be advanced to third reading.

The Chairman — The motion is on the adoption of the amendment and it be advanced to third reading.

Mr. Wagner — What is the question?

Mr. Parsons — I submit, Mr. Chairman, that if it was as Mr. Mereness says during the last Convention that tellers were appointed in the Committee of the Whole, that this Committee should give that due consideration.

The Chairman — The Chair holds that there is no provision in the rules called to his attention for the appointment of tellers.

Mr. Parsons —And there is no provision against it.

The Chairman — Very well.

Mr. Parsons — This Committee is supposed to be following the rules of the previous Convention. There is no change in them in that respect.

The Chairman — It is very easy for the gentleman from New York to obtain a roll call when the Committee rises, but the Chair will not entertain a motion for the appointment of tellers.

Mr. A. E. Smith — I ask unanimous consent that Mr. Young and Mr. Buxbaum act as tellers on the vote to report the bill to third reading.

Mr. Wagner — I object and upon this ground.

The Chairman —An objection is made.

Mr. C. H. Young — Mr. Chairman, I ask a division on the main question.

Mr. Sheehan — I rise to a point of order.

Mr. A. E. Smith — I rise to a point of personal privilege. I have confidence in the clerks behind the desk.

The Chairman — The Convention will come to order. The question before the House is upon advancing the measure to third reading. And upon that motion a division of the House is called for, on the main question.

Mr. Sheehan — I rise to a point of order.

The Chairman — The gentleman will state his point of order.

Mr. Sheehan — My point is, that that motion is out of order for this reason: The only motion that is in order is either that the committee do now rise, report progress and ask leave to sit again, or, secondly, that the committee rise and report the bill favorably to the House and recommend its passage and there is no motion which can be made directing this bill to go to the order of third reading.

The Chairman — The Chair holds the gentleman from New York, Mr. Sheehan, is out of order. All those who are in favor of the motion by Mr. Young will rise.

Mr. Wagner — What is the motion, Mr. Chairman?

The Chairman — To advance the measure to the order of third reading.

Mr. Wagner — I rise to the point of order that such a motion cannot be made in Committee of the Whole.

Mr. Young — Mr. Chairman, I move that the Committee report the bill favorably.

The Chairman — The delegates will be seated. All those opposed will rise. The delegates will be seated. The secretary will announce the result.

The Secretary —Ayes, 70; Noes, 61.

The Chairman — The motion by Mr. Young is carried and the measure goes to third reading. This is getting to be about as interesting as presiding over a Democratic State convention. What is the further pleasure of the committee?

Mr. Low — I believe that the report of the Cities Committee was postponed until these other matters were disposed of and I am now ready to report.

The Chairman — The Chair recognizes Mr. Low, from New York, who is ready to submit a report.

Mr. Low — Mr. Chairman, last night, the Committee of the Whole adopted in General Orders, No. 52, printed No. 810, proposed section 10, and proposed section 11. Many questions were raised as to proposed new section 12.

Mr. Wickersham — Mr. Chairman, I ask that order be preserved in the Chamber.

The Chairman — The Committee will be in order.

Mr. Wagner — I want to raise the point of order that this Committee has no power to receive a report of a standing committee. I suggest that Mr. Low present whatever he has to present to the Convention.

The Chairman — The Chair will say for the information of the gentleman from New York that the consideration of this general order was temporarily postponed until we had disposed of Mr. Young's proposed amendment. Therefore, the Chair recognizes Mr. Low as in order, and he will proceed.

Mr. Low — Mr. Chairman, this is not a report of the Committee, but a result of a conference of the members of the Cities Committee and the State Finance Committee and of some of the members on county government, and it proposes a new Section 12 as a substitute for Section 12 as printed. The new section leaves out everything relating to serial bonds, adopts the verbal amendments that were made last evening in regard to serial bonds, limits the life of bonds to the term of the improvement and provides that when serial bonds have been issued either for new debts or for refunding that provision shall be made —

The Chairman — The Committee must come to order. It is impossible for the delegates to hear the report of the chairman of the Cities Committee.

Mr. Low — I suggest, Mr. Chairman, that the Secretary read the substitute Section 12 for that which was printed. This is printed No. 810, General Orders No. 52, and on page 5, we propose to substitute — we propose a substitute Section 12 for all the matter that is in there.

The Chairman — Does the chairman of the Cities Committee desire to have read the amendment at this time?

Mr. Low — I think so.

The Chairman — The Clerk will so read.

The Secretary — Mr. Low introduces an amendment as follows: Substitute the following for Section 12 as printed. Section 12. All debts except temporary debts contracted in anticipation of the receipts of taxes or other revenues or of the sale of bonds, hereafter contracted or refunded by any county, city, town, village or other civil division of the State, pursuant to an authorization therefor, heretofore or hereafter made, and such portion thereof from time to time so contracted, shall be paid in substantially equal annual instalments, the first of which shall be payable not more than one year, and the last of which shall be payable not more than fifty years after such debt or portion thereof shall have been contracted, except that nothing in this article shall be so construed as to prohibit the issuing by the city of New York of

bonds with a sinking fund for their redemption, to be created in whole or in part out of the earnings from any public improvement owned or to be owned by the city. No such debt hereafter authorized shall be contracted for a period longer than that of the probable life of the work or object for which the debt is to be contracted, to be determined by a general law which determination shall be conclusive. Until the Legislature shall enact such a general law the probable life of the work or object for which a debt is to be contracted shall be certified by the State Engineer and Surveyor whose certificate shall be conclusive, and no such debt shall be contracted until such certificate has been filed with the officer whose duty it is by law to issue the evidences of such indebtedness. The appropriate authorities of each county, city, town, village and other civil divisions of the State shall annually provide for the payment of interest upon and instalments of principal of all debts as the same shall fall due, except that debts now existing incurred for the acquisition of property or the making of improvements of a permanent character, not payable in instalments, and for which a sinking fund has not been provided or for which a sinking fund has been provided insufficient to pay the same at maturity, may, so far as said sinking fund is insufficient to pay the same, be refunded by the issue of serial bonds payable within fifty years from the date of issue of such refunding bonds.

Mr. Low — Mr. Chairman, I think in one place the expression is used " to be determined by general laws ". That should be " to be determined by a general law," which determination shall be conclusive. I think the amendment as now read is self-explanatory and I hope that the committee will be willing to adopt it.

Mr. Parsons — Mr. Chairman, will the gentleman yield for a question?

The Chairman — May the chairman of the committee inquire whether or not the amendment as sent up by Mr. Low covers the amendments that were introduced yesterday by Mr. Lindsay, Mr. Barrett and Mr. Parsons?

Mr. Barrett — Mr. Chairman, I would like to withdraw my amendment.

The Chairman — Mr. Barrett of Westchester withdraws his amendment. Does Mr. Lindsay withdraw his amendment, or is that provided for?

Mr. Lindsay — My amendment contains just one word. If it is in there it is all right.

Mr. Low — Substantially, it is in here.

Mr. Lindsay — If that answers the purpose of the amendment I proposed, it is withdrawn.

The Chairman — Mr. Lindsay withdraws his amendment.

Mr. Parsons — Mr. Chairman, before I withdraw mine, I would like to ask Mr. Low whether he considers that this would not affect general fund bonds of New York?

Mr. Low — It was the determination of those who considered it.

Mr. Parsons — If it covers the point I raise, mine is withdrawn.

The Chairman — Mr. Parsons withdraws his amendment. All amendments have been withdrawn except the one just read by the clerk and presented by Mr. Low.

Mr. Low — With the correction of the plural form "general laws" and making it the singular form "a general law", it is correct.

The Chairman — Mr. Austin's amendment is withdrawn also?

Mr. Austin — Yes, Mr. Chairman.

Mr. Low — I move the adoption then of the substitute Section 12.

The Chairman — Are you ready for the question? All those in favor signify by saying Aye, contrary-minded. The Ayes have it and it is carried.

Mr. Low — I now move, Mr. Chairman, the adoption of the amendment as an entirety as amended.

The Chairman — You have heard the motion by Mr. Low. Are you ready for the question? All those in favor signify by saying Aye, contrary-minded, No. The Ayes have it and it is carried.

Mr. Low — Mr. Parsons calls my attention to the fact that this amendment provides for the renumbering of the later sections of Article VIII. As we have not voted upon that, I move that the renumbering be approved.

The Chairman — You have heard the motion to renumber. All those in favor will signify by saying Aye, contrary-minded, No. It is carried.

Mr. Low — I now move the adoption of the amendment as a whole, as amended.

The Chairman — You have heard the motion in favor of the adoption of the amendment as a whole, as amended. All those in favor will signify by saying Aye, contrary-minded. The Ayes have it and it is adopted.

Mr. Low — I now move that the Committee rise and report the amendment to the Convention, with the request that it be approved and put on the order of third reading.

The Chairman — All those in favor of that motion will signify by saying Aye. All those opposed, No. It is carried — although the Chair has held that the Committee had power to advance an amendment to third reading whether it was so moved or not.

Mr. Wickersham — At the request of the Chairman of the

Committee on Canals, which Committee presents the next special order,— as Mr. Clinton is not desirous of beginning his remarks so near the hour of recess, I move that the Committee do now arise, report progress and ask leave to sit again — it is not necessary that the Committee rise, but I move that we take a recess until half-past two o'clock. I don't know that I make my motion clear. I move not to rise and report progress, but to recess until two-thirty and continue the calendar of special orders.

Mr. Parsons — I raise the point of order that the Committee cannot recess except until one o'clock.

Mr. Wickersham — We have been accustomed, Mr. Parsons, to recess since we are on the calendar of special orders.

The Chairman — The Chair holds that the motion by Mr. Wickersham is in order. All those in favor will signify by saying Aye. All those opposed, No. It is carried. The Convention is in recess. Whereupon, at 12:45, the Committee took a recess until 2:30 p. m. of the same day.

AFTER RECESS—2:30 P. M.

(Mr. Stanchfield in the Chair.)

The Chairman — General Order No. 47 is now before the Committee. The Chair recognizes Mr. Clinton of Erie.

Mr. Clinton — Mr. Chairman and gentlemen: I must ask for unanimous consent for extension of my time to present this question for the reason that the Committee on Canals found that there were several propositions which, in their opinion, should be cared for in the Constitution, and to simply explain the bill will require at least twenty minutes. The task which confronted the Committee was the adaptation of the present provisions of the canal article of the Constitution, section 8 of Article VII, to existing conditions. Those conditions are vastly different from what they have ever been before in this State. Your Committee endeavored, in preparing the amendment, to introduce nothing radical, but to extend the protection of the Constitution to the Barge canal and also to canal terminals, and, at the same time, to take care of the extraordinary conditions which will arise when the Barge canal is completed. When that time arrives there will be a large portion of the Champlain canal and miles of the present Erie canal that will not be adapted to canal purposes and which will be open for sale by the State. At the same time there are portions of the old canal which have been reserved by statute and made a part of the barge canal system. Those portions have become integral

parts of that system and they are necessary to the full efficiency of the system. Part of them for the purpose of adding accessories to the furnishing of canal terminal facilities, and part of them for the purpose of adding to the facilities for shipment by the barge canal without special regard to terminal facilities. Your Committee found that the decisions of the court were leading on to a chaotic condition as to law applicable to the construction of that provision of the Constitution to which I have referred, and which prohibits the sale, lease or other disposition of the Erie, Black River, the Cayuga and Seneca, Champlain and Oswego canals.

At this time I am going to do nothing more than explain the object we had in view and the reasons for putting the Proposed Amendment in its present form. We have been deluged here with letters, and circulars, for and against what has been termed purely a local proposition in Buffalo. As to that I shall say very little directly because this is not a local problem, but it is a State problem. Subsequently if that issue is raised I will endeavor to give you the true version of it. The legal difficulty which has arisen and led on to a chaotic condition, so far as the construction of this section is concerned, are the decisions of the courts, to the effect that any part of the canals which has ceased to become useful for the purposes of navigation upon the canals has ceased to become a part of the canals protected by the Constitution, and you will see what that leads to. Who is to say what portion of the canals, or the feeders or of the canal lands have ceased to become useful factors in the system known and described as the Erie, Champlain, Cayuga and Seneca and Black River canals? One step leads on to another, as I shall show you in a moment. As clear an exemplification of this tendency of the court is the well-known case known as the Sweet case, sometimes, and sometimes as the Syracuse case. In that case the Court of Appeals held that any waters reserved for the canals, and this was the case in Skaneateles lake, might be granted away to a municipality, and that of course means for the benefit of anybody else, to the extent that the evidence in the judgment of the court might determine that some of those waters were not needed for the canals and they called them surplus waters. That is a most dangerous precedent. Those matters should rest in the hands of the canal authorities of the State. Who is to say what are surplus waters and what are not? That had to be taken care of, and that leads up again to canals, and canal property, because if it be true as to surplus waters, it is true as to any portion of the canals, or of the canal property, or of the feeders, if evidence can be introduced to persuade a court that they have ceased to be useful for canal purposes. We had to take care of that and we

endeavored to do so. Another condition which we found was this — we did not find it; we knew it; originally there was no such thing as the Erie canal, Champlain canal, the Oswego canal, or the Cayuga and Seneca canal. They were never named. Originally the names were quite different as used popularly and it was not until the Constitution of '46 commenced to recognize those names which had become popular that the names were given to them, and those names were continued in the Constitution of 1894. They were without definition. The names were incapable of definition. Indeed, in the Constitution of 1894 it was proposed to define the Erie canal. The trouble with that proposed definition was that the effort was to so define the Erie canal that improvement would be restricted, and, had it been done, we never would have seen the barge canal.

I am not going to enlarge upon the advantages of the barge canal because it has been talked so thoroughly throughout this State that the people by a tremendous majority recognized in 1903 that it was the only salvation of the commerce of this State, that is, that the capacity of the canals must be increased to put them upon a competing basis with the railroads. Referring to these other decisions, too, we find that the courts have left the definition high in the air. In the Sweet case and in subsequent cases they say, without definition, that the Erie canal is not — I do not use the language of the courts — any particular canal but that it is simply a waterway from the Great Lakes to the Hudson, thus leaving the door open to change any system for our canals that the Legislature might adopt so far as the Erie canal is concerned. It is utterly indefinite. In taking care of that proposition your Committee came to the conclusion — and it is also in my knowledge, gleaned from thirty-three years' contact with these questions — that it has become absolutely necessary now to give a definition. There is no danger in it because the final improvement has come and consists of two things: First, the taking of the canals from the entire — not entirely, but from the entire idea of a ditch through lands and on high banks and throwing them into the channels of the river and into the wide waters of Oneida lake, in other words, following the natural course and avoiding the dangers and the tremendous cost to the State that would be continually occurring if the old system were retained. Those natural courses having been adopted, we cannot change them. Second, years of consideration have fixed the capacity of the canal upon the only economic basis that a barge canal in this country, where there are no high hills to overcome, should be constructed upon. It has been the subject of thorough study. The ship canal is the next step and the ship canal is utterly impracticable from an economic and transportation point

of view, and from the point of view of the tremendous cost of constructing it across this State and of maintaining it. Those subjects have all been discussed. They have been thoroughly studied. We therefore have reached the end of improvements, and definition is safe, except this — and the definition we have adopted does not interfere with it: There are some who maintain that fourteen feet of depth is better from the economic point of view of giving the cheapest cost of transportation than the twelve feet of depth of the barge canal.

The Chairman — The Chair is obliged to remind the gentleman that he has exceeded his time. We have but an hour to devote to the consideration of this measure.

Mr. J. L. O'Brian — Mr. Chairman, I ask unanimous consent that Mr. Clinton be allowed to continue to his conclusion.

The Chairman — Is there any objection? If not, the gentleman will continue.

Mr. Clinton — I do not like to take up so much time, but I am trying to explain the grounds upon which the Committee proceeded, so that the Convention may have before it a whole view of the effect of the provisions and what it intended. If in the future it should be deemed wise by the State to add two feet in depth to the present barge canals, that can be done. In carrying out these ideas we were met by this obstacle: In defining the barge canals we had just two courses open to us. One was to give a physical description, but to give a physical description would have opened the doors to errors of description, and it would have required an amendment that would have been longer than the present Constitution itself. We were therefore driven to the adoption of reference to the barge canal statutes as a definition of the barge canal. Your Committee studied over that proposition and there is no other solution. I even called in the drafting department and presented it to them to study on, which they did for two days, and there is no other solution. Therefore the bill makes that reference. It also had this proposition; You gentlemen may think your Canal Committee did not have very much to do, but we have had a great deal to do in adjusting these matters. The $101,000,000 appropriated for the improvement of the canals, for reasons which do not involve fraud,— graft as it is sometimes called — has turned out to be insufficient for the completion of the canals. The Barge Canal System cannot be completed farther west from the Hudson river than to its connection with the Oswego canal at Three Rivers Point, the one hundred and one million dollars and the small appropriation made by the last Legislature being insufficient for further construction. That part of the Barge canal which is fed by the waters of Lake Erie must remain incomplete unless the people

see fit to approve the twenty-seven million dollars referendum upon which they will vote this fall. If the referendum becomes law the appropriation made in the Legislature from the general fund last year will be paid from the proceeds of the bond issue and over three million dollars will be returned to the treasury of the State to be used for general purposes, and with the remainder of the twenty-seven million dollars the entire canal will be completed and the indebtedness of the State for property appropriated, paid. Until this is done the barge canal system must remain incomplete and the canal cannot be navigated from Lake Erie to tide water by boats larger than those now used upon the canals.

But in the meantime we shall have two systems. We have the present Erie canal, so to speak, and the barge canal system, making it necessary to preserve the present Erie canal system until the Barge canal system is completed. If in the bill we made it applicable, call it a bill, to the Barge canal system only, then, if the referendum failed, there would be no protection for the rest of the canals, and if the decision of the court says it is the Erie canal, you will have one or the other system unprotected. We, therefore, add to the line the provision leaving it applicable, as it is under the present Constitution, to the present Erie canal system, and postponing its operation as governing the Barge canal system until the Barge canal system has been completed, and that has been accomplished as you will see, by leaving in the words of the present Constitution down to the end of line 5, not referring to the insertions there now, and then providing that "The canals to which such prohibition applies shall be those now known as the Erie, the Oswego, the Champlain, the Cayuga and Seneca and the Black River canals, until the Barge canal improvement" referring for description merely to the title under which it is constructed, "shall have been completed." Then it is made applicable to the Barge canal as described in those lines including the Cayuga and Seneca, adding only the Black River canal, so far as this point is concerned, because that canal is not within the Barge canal act. There are a few amendments to the verbiage which I am going to pass over and then I will conclude my remarks.

Now, there was another thing to be considered. Under the decisions of the courts the canal terminals, so far as they were on the canal, that is, on the Barge canal, would undoubtedly be regarded as a part of the canal and within the protection of the Constitution. But not so where they are not so located, and that would be so in Buffalo and also so in New York. Those terminals are important; they are vitally essential to the efficiency of the

barge canal system. The canals and railroads are supplemental to each other. Every one who has studied transportation recognizes that, but the great function which the waterways, and particularly our canals will perform in the way of giving adequate transportation, is as an automatic regulator of freight rates, because they will always stand ready to give lower rates than any railroad which has ever been constructed. And more than that and in connection with the canals and in connection with the lakes they can make and will make better time on every kind of freight, except the high class freight which goes by fast line. They stand there as prospective competitors of the railroads able to carry, it will be, at a rate not exceeding seventy-five to eighty-one one-hundredths of a mill per ton mile and that is one-half the cost of the best equipped railroad in the United States. That is the great function of the canal. But the canals, if the railroads offer reasonable rates, will not interfere with them and will not take that class of freight out of which the railroads make the most money, the most profits, but will take the heavier and bulky class of freights, which are not most profitable to the railroads, and the canals will build up communities which will give the railroads freight which they would not otherwise get. Our object, therefore is to keep within the State, coming to this State, commerce which is going from it, which, as we know, so far as the through commerce is concerned, is tending to make Montreal the port of shipment for all the western grain in place of New York city. Now you cannot have a canal performing these functions efficient, unless you provide for the public convenience proper terminals, and particularly at the termini of the canal system, Buffalo and New York city. Without it your $101,000,000 amounts to nothing, so far as the canals are expected to perform the functions of a rate regulator on the railroads; and I am not stating this from mere observation. It is backed up by reports, I think three years ago, of the then department of commerce and labor, and railroads have acquired all of the lands, all of the available frontage in our harbors that is the most available frontage for the receipt and shipment of freight; and in Buffalo, aside from some private elevators, they have got all, except that the city of Buffalo has finally condemned a tract in the Black River harbor, and except in the Erie basin in Buffalo, where this State owns a small piece twenty-five feet long and except on that water front there are some parcels of land that the New York Central railroad does not yet occupy. So that you can see, unless we have under the control of the State these terminals, this canal system will simply fall into the hands of railroads through subsidiary navigation corporations, but with these free terminals, and with the facilities for shipping

open to all, the benefits of the millions the State is spending is going to those who are to navigate the canals, and they can compete with the railroad where necessary.

Therefore, looking at the act of 1911, which provided for these canal terminals, at an expense to the State of over nineteen millions of dollars, and inasmuch as the most important ones, which are those really in New York city, might be protected the same as the canals themselves, we have included in this bill, as you will see, on the first page, the matter in italics, "or canal terminals heretofore or hereafter constructed." Now, we come to another proposition. I have read the effect of the decision of the Court of Appeals. I am not going to indulge in arguments as to their being human beings or not. We know that that is a fact. We know that all human being are apt to err in judgment, particularly when they are deciding cases. But in the case of the People ex rel. The New York Railroad Company, against Walsh, Comptroller, we find this remarkable state of affairs. At the crossing of the New York Central Railroad embankment, some distance this side of Lyons, where the canal led off to the Clyde river, down which it went, it became necessary to make arrangements with the New York Central Railroad. It is perfectly apparent that the traffic of a great railroad could not be interfered with or destroyed while the work of cutting through and bridging was going on, and the policy laid down by the Canal Board, which I regard as the correct policy, was to contract with the New York Central at a fixed price to take care of the situation while the work was going on and to put in a bridge where necessary, the idea being that if the work was done by the railroad at a fixed price, and it turned out to be defective, or accidents occurred, the State would not be liable, but the railroad. That contract provided among other things that, as a consideration for the railroad's putting in a turn-out and as a consideration for its building the bridge after the work was completed, it should receive certain moneys and should receive a quitclaim deed of lands which had been condemned for canal purposes, and when that came before the Court of Appeals because the contract was a proper one and because the New York Central had performed its part of the contract, the court strained itself to hold that that contract for the deeding of those lands was valid. By no fault of the result of the decision, the grounds upon which it was based were not necessary. The court held this, and I want you to stop and think about it, and to think of the results: It held that the quitclaim deed must be construed not as a deed to convey the fee but as a deed to give a permanent easement, and that as a permanent easement which involved exclusive possession, it was not within the constitutional

provision. Now, we had to take care of that, and therefore, in this provision you will find the clause inserted. The court said that under the appropriation act it did not appear that the State took the land in fee. Therefore, we covered that by providing that property which had been or may be hereafter taken, all property for canal purposes, shall be deemed to be held by the State in fee, and we inserted on page 1, lines 5 and 6, in addition to the language of the present Constitution, "nor shall any easement in or incumbrance on such canals or terminals be created." That explains that part of it. Now, let us see what we come to next. I have said there would be miles of old canal which would be lost for bridge, canal or terminal purposes, and must be sold. For two years we have endeavored to get legislative sanction to a general act which would provide for proceedings for the appraisal of the land of the old canal which would be subject to sale. The State cannot maintain all the old canal. It is useless, a large portion of it, and the expense would be great, and under the decisions of the courts they could or could not be sold, accordingly, as the court held that the present provisions of the Constitution applied to the present Erie canal which still would remain intact, or the Barge canal. Having taken care of that by distinguishing, as I have said, and assuming that the courts would say, then, if this became a constitutional provision, and the barge canal was completed, that the old canal — it may be a violent assumption, that is, those portions not needed could be abandoned. That is, they would be open to abandonment and sale. We have tried to regulate it so that the abandonment, sale or other disposition of canals or canal property which shall cease to become a portion of the canal system of this state, as above defined, shall be under and pursuant to general laws only, and such laws shall secure to the State the fair value of the property which may be abandoned and sold. That is what you may call special grants precedent by special laws as has been done before. Without confining it to general laws, as soon as the Barge canal was completed, we would have bills in for this city, for that city, for this individual, and that individual, with no regulation; therefore, this must be done, if the interests of the State are to be conserved by general law, which shall secure to the State the fair value of the property which may be sold. I could give you quite a little history, but I am not going to do it now.

Passing on, we come to the leasing of surplus waters. It has been suggested to me that our provision, which is found on page 3, that "the legislature may, by general laws, but not by special laws, provide for the leasing of surplus waters of any of the State canals or canal feeders"— that that is conferring a right which

may be prejudicial to the canal, the leasing of surplus waters. It is not so intended and does not have that effect because under the decision of the court unless we say no surplus waters shall be leased, which in our opinion is unnecessary, because where there are surplus waters there is no reason why they should not be devoted to manufacturing processes; but taking the decision of the court and with that principle we concluded it must be limited, that that power must be limited; and, therefore, we provide, if you will see, lines 6 to 15, in substance, provisions which would prevent the leases becoming perpetuities, and leaving it in the hands of the canal authorities of the State, under any condition which might arise, to suspend the operation of a lease to regulate the amount of water to be used, as the exigencies of navigation require. That is not the language but that is the effect of it. Now that is the bill. I want to say in addition, that if this Convention admits of any amendment to this bill which leaves out an accurate description so as to define what the barge canal will be, to save the present Erie canal until the barge canal is completed, which looks to anything in the shape of the abandonment of any part of the old canal which has been reserved by statute, it will be wounding the canal system, and fatally wounding it.

I want again to call your attention to the fact that the terminal facilities and all the terminal faculties available must be protected. There are one or two special clauses that I want to take up. I am consuming too much time but I cannot help it because the subject is so new. We have inserted in here the protection of the canals from Tonawanda creek to Black Rock harbor. It is hard to describe to you gentlemen now, but this is the situation: The barge canal, by amendment to the original act, was made to terminate in the Niagara river. Originally this part of the canal was preserved and that would leave, unless we saved it here, the inland canal from Tonawanda to Black Rock harbor in Buffalo, open to sale. All navigators of the canal, all those engaged in shipping, those knowing the circumstances believe that that must be saved for this reason: Westbound boats, either light or having partial cargoes, can use that canal to reach Buffalo, and, through that portion of the canal as to which you have been circularized here — Buffalo harbor — without going into the Niagara river. If they go into the Niagara river, we have a current which from the great federal ship lock at the foot of Snow Island runs from three miles an hour to two and a half miles an hour. Such boats — because they will go in fleets — will, against that current, have to employ tugs to tow them up for six or seven miles. You can imagine the added expense. The river can be used going down for east-bound boats. Slips one and two. The present law of

this State preserves as part of the barge canal system that part of the canal which is sought, by these people who have circularized you, to be abandoned. We have nothing to say as to that; it is already saved. But slips 1 and 2 were not mentioned in that act. Slips 1 and 2 connect the only canal terminal we have in Buffalo that amounts to anything, the Erie Basin terminal with the present canal. Slip 3 is reserved. Slip 3 is a short slip and is really part of the New York Central plant there. As it comes out, if a boat were going straight — it has to make a sharp turn — it would run right into that basin. Those are inserted simply for the purpose of still preserving all the facilities which we can get and which are needed in the navigation of boats and the loading of freights and discharge of freights in Buffalo river. The Erie basin is a very much contracted terminal. In the widest part it is only about a thousand feet wide and, in constructing the terminals, the piers which will be built will run down to within 200 feet of the breakwater. We are not going to say anything more about that for the present. I might say that a portion of slip No. 2 is saved by the provision I have referred to to-day. One other thing; that is the clause relating to Utica. The barge canal passes to the north of Utica, quite a distance from the central manufacturing part. When the canal terminal act was passed a clause was inserted preserving the canal from Rome to Mohawk through the city of Utica, so that the manufacturers in Utica could have convenient means of shipping. A contention arose there between the municipal authorities and the people of Utica generally, and the manufacturers. Those of you who have been in Utica know of the absurdly high bridges there. They go up above the grade of the streets. They want to get rid of those between Schuyler and Third streets. They arrived at a compromise by which — I drew the language for them, with a view to protecting the canal at the same time — the city authorities are given power to close that portion of the canal between Third and Schuyler streets, provided a sufficient flow of water is kept up to feed the level east of the fill. The clause is permissive and the condition is practically that the flow of water — because it affects the entire level — must be preserved. Mr. Chairman, I present the following amendments. They are intended to correct errors which were unintentional and to prevent wrong interpretation of the language used.

The Secretary — By Mr. Clinton, page 2, line 11, after the word "as" insert "heretofore." Page 2, line 14, after the word "reserved" insert "for barge canal or" and after the word "canal" insert the word "terminals." Strike out the word "for." Page 3, line 1, before the word "property" insert the

word "real" and make the capital letter in "Property" a small letter. Page 3, line 3, after the word "fee" strike out the period and add the words "unless expressly taken for temporary purposes." Page 3, line 6, after the word "feeders" strike out the period and insert "or of any water impounded by the construction of dams, reservoirs or other structures." Page 3, line 15, after the word "under" and before the comma, insert "together with the corresponding compensation therefor."

Mr. Sears — Mr. Chairman, I offer an amendment and then I wish to explain it.

Mr. Wickersham — Mr. Chairman, the time limit fixed by the rule has nearly expired and it is obvious there are several speakers who wish to be heard, so I move that the Committee rise, report progress on this measure, and ask leave to continue its consideration until half-past four.

Mr. J. L. O'Brian — With a vote to be taken not later than four-thirty?

Mr. Wickersham — With a vote to be taken not later than four-thirty.

The Chairman — The Committee has heard the motion of Mr. Wickersham. All those in favor will signify by saying Aye, contrary No. It is carried.

(The President resumes the Chair.)

The President — The Convention will come to order.

Mr. Stanchfield — Mr. President, the Committee of the Whole reports progress on general order No. 47, being the proposition introduced by the Committee on Canals, and asks leave to sit again, upon condition that a vote be taken upon the proposition not later than half-past four this afternoon.

The President — All in favor of granting leave will say Aye, contrary, No. The leave is granted and the Convention will return to Committee of the Whole for consideration of the special order. Mr. Stanchfield will resume the chair. (Mr. Stanchfield resumes the Chair.)

Mr. Sears — I send the amendment to the desk.

The Chairman — The amendment will first be read by the Secretary.

The Secretary — By Mr. Sears. Insert in page 2, line 16, after the word "harbor" the words "from the Black Rock harbor to Wilkeson street and canal slip, Number three,"; and in line 17, after the word "two" insert the words "between the Erie Basin and River street but excluding the portion of the canal from Wilkeson street to and including the Commercial slip."

Mr. Sears — Mr. Chairman, I yield to none in my respect for the judgment of my colleague, Mr. Clinton, and my respect for the Committee. I agree with Mr. Clinton that the canal matter

as a whole is one of State concern, but I disagree with him in respect to a local matter which the Committee has seen fit to include in their report and in the bill as recommended by them. I ask that the amendment which I have proposed be accepted for the reason that the portion of the canal which I have sought to exclude from the permanent canal system of the State is one concerning which I think I can show that it has been decided that it will not be necesary to retain it as a permanent portion of the canal system of the State. Now, let me go back into a little history. The gentleman has explained how the Erie canal originally, as designated for improvement, ended at Tonawanda at the Niagara river, and then how there was afterwards added thereto a portion of the inside canal, extending from Tonawanda to Black Rock and to the Buffalo harbor. That is all very true, but in the lower part of the city of Buffalo, south of the street called Wilkeson street, there is a portion of this canal of about half a mile in length which it is not contemplated to improve as a part of the improved canal system of the State. And my amendment seeks to have this part excluded from the permanent prohibition against sale, so that when the time comes that the Erie canal will be improved as a barge canal, then the Legislature and the public authorities can determine whether this portion of the canal shall be retained or shall be sold for the benefit of the State and the property used for other purposes. Now, in 1911 there was a report made to the Legislature by the Barge Canal Commission, consisting of the Honorable Frank M. Williams, now the State Engineer and Surveyor; the Honorable Frederick C. Stevens, then the Superintendent of Public Works, and two expert engineers, Mr. Edward A. Bond and Mr. Harvey J. Donaldson, and they considered the situation in Buffalo, and I will take the liberty of reading a few sentences from their report. "This Commission," they say in their report, submitted to the Legislature in that year, "has given considerable study and careful consideration to the situation at Buffalo. Hearings have been had at which have appeared representatives of the city government and of the commercial organizations of the city." And then, omitting some of the details, I come to the part covered by my amendment: "The Commission further recommends the abandonment of that section of the Erie canal extending southerly from Wilkeson street to and including Commercial slip, and that the same be closed and filled and the property thus reclaimed by the State to be sold and the proceeds applied to the purchase of the property lying between Lake street and Slip No. 2, with its easterly boundary at River street, and also the property lying between Genesee street, Slip No. 3 and Rock street, both prop-

erties abutting on the Erie basin, and that the property thus acquired be used in the development of the terminal herein recommended, whatever balance remains from the sale of described abandoned canal property to be applied to construction."

Now, that was the report of the Commission appointed to investigate the subject. Nor is that all. This very matter was embodied in a statute of the State of New York, which this report omits in its enumeration of laws in relation to barge canal permanent improvements, and this is the statute of 1911, chapter 746. The language of this statute, which was submitted to the people of this State for approval, and was approved by the people upon the referendum, is as follows: "The entrance to slip number three shall be widened in such manner as will permit barges one hundred and fifty feet long and forty-four feet wide to pass from the present Erie canal into the Erie basin. Slip number two from the basin to River street shall be deepened to thirteen feet at mean lake level and shall have a clear head-room of at least fifteen feet and six inches. The Erie canal from Wilkeson street north to Black Rock harbor, as being improved by the government of the United States, shall be deepened so as to give thirteen feet of water at mean lake level." And then note the following language: "The section of the canal extending southerly from Wilkeson street to and including Commercial slip may, in the discretion of the canal board, be abandoned, closed and filled; but the same shall not be abandoned, closed or filled until after slip number three shall have been improved and the Erie basin terminals constructed as herein provided." Now, Mr. Chairman, the purpose of my amendment is to prevent the Constitution of the State from overruling this decision of this Commission and overruling the statute adopted by the Legislature pursuant thereto and approved by the people at the election in 1911. I want to say that I believe that this amendment of mine would have the almost unanimous approval of the people of the city of Buffalo. It is approved by all of the English daily newspapers in the city of Buffalo, three Republican and two Democratic. I have a letter from the mayor of the city, which I will take the liberty of reading. He says, "I earnestly hope the Clinton amendment relating to canal terminals will not prevail. Questions of such great importance should be left entirely to legislative enactment, and I am sure that I can speak for almost the entire city of Buffalo in expressing my opposition to this Clinton amendment." And I have a letter from the Acting Commissioner of Public Works of the city of Buffalo, which I will read: "In reply to your letter of August 4th regarding proposed amendment to the Constitution regarding the prohibition of abandonment of portions of the Erie canal in this city, I would state

that I am not authorized to express any opinion on behalf of the city of Buffalo, but as engineer in charge of harbor work I believe that it is at least probable that the abandonment of the Commercial Slip and the Erie canal as far as Slip No. 3 might be advisable in the future, as with the increase in the size of vessels and change in traffic conditions there has been a tendency to the abandonment of interior portions of the canal where not required for through traffic.

"My personal opinion would be that, as a State, we should be able to trust ourselves to meeting these conditions as they may hereafter arise by legislative action, rather than to place unnecessary burdens through limitations through the Constitution, which I believe should not be used for more or less special legislation, but rather to establish general principles on which legislation may be based. Were provisions incorporated which would make impossible abandonment without the consent of the executive authority, such as the Superintendent of Public Works and the State Engineer, or their possible successors in title, I believe that the same should safeguard general principles without imposing unreasonable restrictions." Now, Mr. Chairman, just a word more. I do not ask that this body decide one way or the other whether this portion of the Erie canal should be abandoned. I would vote against the amendment of this portion of the canal if that question were before this House at this time, but that is not the question. The question is, shall we tie the hands of the Legislature and of the public authorities so that, even though this portion of the canal became unnecessary, as this commission says, as this legislation seemed to apply, and as the people said when they approved it, as these officials of the city of Buffalo have said in these letters — shall we tie their hands, I say, so that they can never abandon this portion of the Erie canal? Therefore, Mr. Chairman, I ask that my amendment be given consideration and approval.

Mr. Cobb — Mr. Chairman, I have an amendment which I propose to introduce, but before I hand it up, since I have but one copy, I would like to say a few words on it. Personally I do not know anything about slip No. 1, or 2 or 3, in Buffalo, or Commercial slip, nor do I know which one ought to be retained or which one ought to be sold, nor do I know whether Oriskany creek in Oneida county is sufficient to furnish the necessary water for that level in Utica. I really do not feel that I or any of us are called upon in this Constitutional Convention to decide these matters. If we were to do so, we would need to consult with the canal authorities, with the Superintendent of Public Works and the various State officials, and wait until they have laid out the

route of the improved barge canal and determined what property it is necessary to keep and what property should be sold. Now, this is so clearly legislation, so clearly matters of details that ought to be dealt with by the Legislature or by State officials, that I, being interested in the canal, and our city being interested and hoping in the future, as many here know, to be able to obtain that portion of the abandoned canal that runs through the city for the purpose of doing away with grade crossings — I have looked over this bill to see if some amendment could not be offered, which, in general language would permit to be taken what we want and prohibit that which we think ought to be prohibited. Now, what we are trying to do, if I understand it, is this: this Barge canal, to some extent, follows the route of the old canal, but in other parts of the State, it makes long departures from that route. For instance, there is a strip of canal, extending, substantially, from Rome to Clyde, something like a hundred miles, that is entirely abandoned. Heretofore we have had in our Constitution an absolute prohibition against selling any of the canal lands or canals of the State. Since we are going to modify the route of the canal and abandon a large portion of it, we wish to accomplish simply this: We wish to be able to dispose of those parts of the canals that are no longer useful for canal purposes and that have been abandoned or shall be abandoned in accordance with laws which have been passed, and we wish to prohibit the sale of the improved barge canal system.

Mr. Clinton — I have not heard the amendment read. I ask that it be read.

The Chairman — Mr. Cobb stated that he had only one copy, that he desired to speak from it and would send it to the desk as soon as he has explained it.

Mr. Clinton — Will the gentleman read it?

Mr. Cobb — Certainly.

The Chairman — I think, Mr. Cobb, you had better send it to the desk, and have it read, or read it yourself.

Mr. Cobb — I will try to read it myself. Page 1, line 5, after the second word "canal" insert the words "the improved Barge canals." With that insertion the clause will read: "The Legislature shall not sell, lease or otherwise dispose of the Erie canal, the Oswego canal, the Champlain canal, the Cayuga and Seneca canal, the improved Barge canals,"— following Mr. Clinton's amendment. After providing in the amendment submitted by the Committee that these lands shall not be sold, there is a further definition and a further prohibition on page 2. Now, the second part of my amendment is as follows: Page 2, after the bracket in line 5, strike out the balance of the page and insert in place

thereof the following:— Understand now that by general language that prohibits the sale of all of the canal lands of the State — "When, however, in conformity with laws heretofore enacted for the improvement of the canals of the State any portions of such canal shall no longer be used or required by the State for canal purposes the Legislature may by law enacted pursuant to the recommendation of the canal board declare such portions of the canal to be abandoned, whereupon they shall no longer be subject to the prohibition herein contained. The Legislature may thereafter provide for the sale, lease or other disposition of the portions of such canals so abandoned by general laws which shall secure to the State the fair value thereof. Any such sale, lease or other disposition shall be subject to the approval of the commissioners of the land office." Now, this amendment has been submitted to several learned constitutional doctors in the Convention and they believe, as I do, that it accomplishes the purpose which this amendment set out to accomplish, namely, to permit the sale of those lands which the State has by statute practically abandoned and contemplates abandoning when they shall be disused. It provides, as you will see, the following safeguards. First, no land can be abandoned until the canal board has approved of its abandonment. Then it must be declared abandoned by the Legislature, with the approval of the Governor. Then, when it is sold, the sale is subject to the approval of the commissioners of the land office. The amendment offered by the Committee proposes to accomplish this purpose but it undertakes to do more. It undertakes to modify the plans of the State with reference to the canals. It retains a certain strip of canal which the State has already decided to abandon, to wit, that from Tonawanda to Black Rock Harbor. It provides for the retention of certain slips in the city of Buffalo.

Mr. Clinton — You say that the State has decided to abandon that. Where do you find that?

Mr. Cobb — In the Laws of 1903, as I understand, this strip is retained for a canal feeder. But, however that may be, if it has not been abandoned, let me say this: If the State has not undertaken to abandon it, then there is absolutely no occasion for describing it definitely in this provision in order to retain it. You would naturally assume that it was to be abandoned if we have to resort to the Constitution to prevent it. The same thing relates to the city of Utica. I have confidence that the authorities of the city are able to provide sufficient water for that level in the canal in the city of Utica without intervention of this Convention. In closing,— and I have hurried somewhat — of course, I appreciate that Mr. Clinton is a mine of information with regard to the canal and the work he has done, and yet I cannot help feeling

that in this amendment we resort to special legislation. It reads like a statute and not like a constitutional provision. If, as I believe, this general amendment accomplishes the same purpose, I should feel very much better to have it adopted. I might say that in Syracuse, for instance, we were not especially pleased with the selection of the terminal. We would have liked to have lands retained which they abandoned and lands abandoned which they retained, but I hardly think we ought to come here and insert a provision in this document for that purpose. In other words, I believe we ought to eliminate all these details which are questions of engineering, which would require the time of this Convention for a week to pass upon with any justice at all, and we should resort to a simple amendment to provide for the sale of lands which, being disused, have been formally abandoned.

Mr. Dunmore — Mr. Chairman, I did not intend to take the time of this Committee further than to say that the provision in reference to the city of Utica, commencing with line 17 and terminating in line 22, is entirely satisfactory to the people of Utica. But, in view of the amendment offered by the delegate from Syracuse, I feel that I must say something more.

Now Utica is a city of nearly a hundred thousand inhabitants. The people of that city were divided into two hostile camps. Those interested in the manufacturing industries wanted the old Erie canal retained, running through part of the city. And those who were not interested in manufacturing, but had property located along the main street of the city and wanted to beautify their property irrespective of what effect it might have on the manufacturing interest of the city, wanted it abandoned from Rome to Mohawk — or at least it would have to be abandoned from Rome to Mohawk if it was abandoned in Utica. As stated by Judge Clinton, the Barge canal runs for a mile north from Utica so that to reach it the manufacturing interests, one group of which is located east of Third street in Utica, and the other west of Schuyler street, would require a haul of two or three miles, and that would eliminate the patronage of those industries from the Barge canal because in that group of industries located in East Utica, east of Third street, the Central railroad has a branch running right close to the factories so that they could have their freight loaded and unloaded at their back doors and in the group of industries in West Utica, the D., L. & W. has a branch running right close to all of their factories, so that they could have their freight loaded and unloaded at their back door. The result would be that if this whole line of the Erie canal was abandoned, through the center of the city of Utica, the Barge canal would get no patronage practically from the city

of Utica. It would be cheaper for them to ship by rail than it would for them to have these long hauls. Now, I say the city of Utica was divided into these two hostile camps; they appointed committees representing each and they have been at work for months on some solution of the problem, some compromise that would solve the situation in the city of Utica. It resulted in the drafting by Judge Clinton and the Canal Committee of these provisions. I admit it is a little peculiar, but it simply does what the delegate from Buffalo said ought to be done; it unties the hands of the Legislature, and permits it to do this if in the future it is desired. This does not work it out, but there has got to be an act of the Legislature with the concurrence of the cities in order to carry that out. The idea is, starting with Schuyler street the water should be taken underground through a conduit from Schuyler street to Third street. That would leave the spur of the old Erie canal by which this western group of manufactories could connect with the Barge canal by way of Rome. It would leave a spur east of Third street by which the easterly group of manufacturing interests east of Utica can connect with the Barge canal by way of Mohawk so that it would leave the situation, if this should be carried out, so that the canal would get the patronage of the city of Utica in transporting its products, and after this water was taken through the conduit underground from one point to the other the canal bridges could be lowered and a large amount of expense saved to the State in that way. The expense, of course, it has been anticipated, would have to be borne by the city of Utica. Nobody believes for a moment that the canal authorities would consent to this arrangement on any other basis.

Now, I don't know anything about the situation in Buffalo, I don't know anything about the situation in Syracuse, but I do think that I know the situation in the city of Utica better than any other delegate in this Convention, and I know what the feeling in the city of Utica is, and this will take care of the situation in the future and will untie the hands of the Legislature and untie the hands of the public officials so that this result can be accomplished if it is deemed advisable.

Mr. Cullinan — Mr. Chairman and Gentlemen: I want to say a few words in defence of the investment that the State of New York has entered into with reference to the Barge canal, and looking at it from the standpoint, from a different angle from our friend from Buffalo, Mr. Clinton, who has discussed it, and who fortunately for the State of New York, possesses a mine of information of inestimable value in considering its welfare. The great question, gentlemen, to-day is, are canals upon their own merits — are they worthy of preservation? And are they conducive to the promotion of the welfare of a community or a

commonwealth where they exist? I say without hesitation that that question can be answered in the affirmative. In the first place, all economists agree that the rate of transportation per ton mile is so much to the advantage of water-borne transportation, as against railroad transportation that there can be no question of the advantage of water-borne transportation as against railroad transportation. Now, I do not care to discuss this question from the standpoint of a shibboleth that water-borne transportation is to curb railroad aggression or, on the other hand, am I going to stand for railroads which parallel a stream and by a lowering of rates seek to destroy navigation on that stream, and after its destruction to restore its rates. No, they both can live together advantageously, and they do live together, advantageously in all the countries of the world where they both operate. Now, gentlemen, in 1907, which was a period of great prosperity in this country, James J. Hill, a great railroad builder and empire builder, at a meeting of the Rivers and Harbors Congress of the United States, sometimes known as the "Little Congress of the United States," a gathering of four thousand delegates from all over this country, stated that the railroads were limited and could not transport the cereals of the great West to the seaboard. And in that same convention the President of this Convention, who was then a Senator of the United States, said: "We have come to a point where the railroads of the country are unable to perform the function which is necessary to continued progress in the increase of our national wealth. Conditions are such that there is no human possibility that railroads can keep pace with the necessities of our national production and for the transportation of our products, and the only avenue that is open for us to keep up our progress is the avenue of water transportation." We have, therefore, the necessity before us of providing some means of transporting our products to the seaboard. We then also have before us the advantage of water-borne transportation as against railroad transportation, as to results, inviting us to accept the present situation and develop our Erie canal to the extent that it may be the factor which it ought to be in connection with the development of the Empire State.

Now, I am not ignorant of the fact that there are those who say that canal transportation is a thing of the past, and that we look at the abandoned canal, perhaps not canals which have been abandoned, but in a condition such as our Erie canal and some of our other canals have been, antiquated, not keeping pace with the discoveries of the time. While, on the other hand, gentlemen, right north of us is an empire that is threatening the commercial supremacy of the State of New York, and only a

short time ago that great premier of Canada, Laurier, said: "The Twentieth Century is Canada's," and they are fostering one of the greatest systems of water-borne transportation that the world has ever seen, notwithstanding what is occurring elsewhere, and then they are claiming that they are going to be able, as against the United States, to take the cereals of the West and land them cheaper at Montreal than at any other port on the Atlantic seaboard, and Montreal, which is a thousand miles from the sea, is threatening the commercial supremacy of the city of New York by reason of the fostering care that that young Empire State is giving to the subject of water-borne transportation.

Mr. Dykman — I would like to ask the gentleman if he has not read in the papers to-day that application is to be made to the Canadian courts to put the city of Montreal into the hands of a receiver.

Mr. Cullinan — I have not read that, but that is hardly justification for an interruption of that kind as being a fact against water-borne transportation.

The Chairman — The time of the gentleman from Oswego has expired.

Mr. Cullinan — Mr. Chairman, I would like a little more time, if the committee please.

The Chairman — If the gentleman will bear with me. The Chair is obliged to enforce the rule. There are several other speakers, and we will have to conclude the debate at half past four. I do not like to cut the gentleman off, but I am obliged to see that the rule is in force.

Mr. Cullinan — I would like to have five minutes more in which to speak about this development of water transportation.

A Delegate — I object.

The Chairman — Objection is made and an extension of time is refused. The time is limited and the debate must be concluded at half-past four.

Mr. Clinton — Mr. Chairman, I understood in response to my statement in my opening that I was to have at least five minutes to speak on these amendments. That was my statement when I asked for unanimous consent.

The Chairman — After the conclusion of the debate, we will take that question up.

Mr. Franchot — Mr. Chairman, I rise to speak not only in the interests of the city of Buffalo, but also in the interest of the success of this Constitution before the people upon election day. It may not be known to the members of this committee, but it is the fact that this particular article proposed by the committee on canals embodies within it controversial matter, matter bitterly

controversial in the city of Buffalo. I realize that the tendency of the members of this committee would be to yield to the suggestion of the delegate from Erie, Mr. Clinton, and in non-controversial matters, I certainly would accept what he says as the best judgment without question. But as chairman of the committee and with the vote of the committee, he has embodied in this article, although not expressed in terms, a discrimination against the city of Buffalo which is bound to arouse very considerable opposition among the electors of that city. You will note upon page 2 of this amendment that there is an enumeration of certain statutes, namely, chapter 147 of the Laws of 1903, and chapter 391 of the Laws of 1909, which provide for the barge canal improvement, and those acts do so provide, but also provision is made by another act of the Legislature, namely, chapter 746 of the Laws of 1911, for the improvement of the barge canal. All mention of the statute which I last mentioned is omitted from this proposed amendment. I don't know the reason, but it is open to conjecture that it was omitted because it expressly provides that there shall be left to the discretion of the Legislature and the State authorities the question of whether or not, as the barge canal was completed a particular portion of the old Erie canal within the boundaries of the city of Buffalo should be abandoned. The provision of lines 14 and 15, on page 2, is to the effect that the prohibition shall extend to portions of existing canals heretofore reserved for barge canal or terminal purposes. There was a subsequent statute in the year 1913, passed by the Legislature providing for toll bridges over the canal which, by an inadvertence or otherwise, repeated the language of the original act of 1903 with respect to the preservation for canal purposes of the particular portion now under discussion. Now, that has been a matter left for the exercise of State authorities in their discretion, after investigation and when in full possession of the facts. The proposal of this committee, if adopted, will have resolved this Constitutional Convention into a legislature to decide questions of expediency with respect to the future construction of the canal rather than a Constitutional Convention deciding upon fundamental principles. Now, the electors of the city of Buffalo, I have reason to know, will not look with calmness upon a discrimination against them.

Mr. Clinton — What reason have you to know that the electors of the city of Buffalo will not look upon it with calmness? I assure you, if the proposition is put up to the city of Buffalo, our proposition will be carried by a tremendous majority.

Mr. Franchot — That may give rise to a difference of opinion as to what the sentiment of the city of Buffalo is, and I do not stand here speaking, claiming to speak for all of the electors of

the city of Buffalo, but one thing is perfectly certain, namely, that this is a controversial matter. It is a matter which is going to inject into the consideration of the Constitution as a whole in the city of Buffalo a bitterly contested controversial matter; and I, as one in favor of the constructive provisions which we have already adopted and which I hope we will further adopt, cannot look without apprehension upon the proposition of doing something affirmatively which will arouse controversy and opposition, when by merely remaining silent upon the subject no such controversy will be aroused.

Mr. J. L. O'Brian — Mr. Chairman and gentlemen of the Committee: I rise, not to discuss the merits or the demerits of slip No. 1, or slip No. 2, but to say a word in behalf of what I think is the interest of my city as well as the city of Mr. Clinton, and to say a word in behalf of what I believe to be the welfare of the Constitution, and to appeal to the Convention's sense of fair play upon a bitterly disputed question. The present canal with which Mr. Sears' amendment dealt, the so-called stub end of the Erie canal, which terminates practically at Main street, in the lower part of the city of Buffalo, and runs a distance perhaps of half a mile. As the law stands to-day approved by the people, that part of the Erie canal, being a stub end, running up to the commercial slip is not perpetually reserved. It was not a part of the barge canal, and it is within the power of the Legislature when the barge canal shall have been completed to sell that particular section. Now, that is the piece of canal which is in controversy here. Mr. Clinton has stated that this is a State matter, but I assure you, gentlemen, it is a very intensely local matter, what shall be done with this particular end of the canal, because those of you who have been in Buffalo will recall that between Main street and the Erie basin there is only at its widest part about a half a mile of territory, and this piece of territory traverses that section and separates the Main street section from the water front proper. There is in Buffalo and has been for many years a dispute going on about which Mr. Clinton will undoubtedly tell you on the subject of the location of the Union station terminal, and the new freight terminals, and I have been told, as you have been told, that the railroads want to build a union station in this particular section near or on this canal. Others will tell you that the railroads do not desire to build a union station. If there is one question in the local politics of Buffalo which is of perennial freshness, it is the question of the railroads' layout in the lower part of the city of Buffalo which may be affected by this canal situation. Now, what does this amendment propose to do? It proposes to legislate, to legislate into the Constitution of the State

of New York, contrary to the existing provision of law, and reversing those provisions — to legislate into the Constitution a protection of that stub end of the Erie canal so that it cannot be sold and cannot be used and must remain there. Now, the argument in favor of it partly is that although not a part of the Erie canal or the barge canal, that later if the Legislature will spend more money it might become useful as a new outlet to the Buffalo river.

Now, gentlemen, you are here drawing a Constitution. The Legislature has properly jurisdiction over this matter. What do any one of you know about slip No. 1 or slip No. 2 or slip No. 3, or this stub end of the Erie canal in Buffalo? Why, the Buffalo delegation in this body is divided on the merits of this proposition. Part of them are for it and part of them are against it, and yet you are asked to enact into the Constitution a provision on which the city itself is somewhat at sea. Now, gentlemen, in the interest of fair play, and with all due regard to the members of the Canal Committee, I want to call your attention to another fact. There was no bill introduced in this House covering this proposition, so far as the city of Buffalo is concerned. The city of Buffalo never had any notice that the Committee on Canals were even considering such a proposition. The first time it ever was heard of was when the Committee on Canals reported to the House favorably a bill containing this provision, without any notice, without any hearing, and without any member from the city of Buffalo, except Mr. Clinton, himself, on the floor of the House, knowing anything about the fact that the Committee on Canals was considering it. And the only hearing which anybody from the city of Buffalo has had on this matter was a hearing which was held informally by six members of the committee last Monday afternoon. Now I respectfully urge that the House give the city of Buffalo a chance in the province of home rule. If this had been done in the Legislature, there would have been a howl go up all over the State. You don't know anything about this proposition; I know very little about it, but I ask you not to enact into the organic law of the State such a provision. There is controversial bitterness in this thing, the mayor, the commissioner of public works, the terminal commission and every important newspaper, every English-speaking newspaper that amounts to anything in the city of Buffalo has strenuously protested, and I trust that the amendment of Mr. Sears will be adopted, and, if not, the amendment of Mr. Cobb, and that you will not set aside the expressed sentiment at the present time of the city of Buffalo.

Mr. Mealy — Mr. Chairman, I offer an amendment.

The Secretary — By Mr. Mealy. To amend Proposed Constitutional Amendment No. 710, page 2, line 16, after the word "harbor" insert the following: "those portions of the Erie and Champlain canals heretofore reserved by chapter 243 of the Laws of 1913."

Mr. Mealy — Mr. Chairman. This proposed amendment deals with that part of the Erie and Champlain canals which run through the city of Cohoes, or rather the part of the Champlain which runs through the city of Cohoes and the part of the Erie canal which runs through the city of Waterford and Albany. Cohoes is at present served with two canals, the Champlain and the Erie canals. The flight of locks known as the Eighteens which run through Cohoes are now abandoned and merchants and industries along that front of the canal are compelled to abandon the same unless they may locate upon the banks of the Champlain canal which runs from Waterford to Albany. Some of the gentlemen are aware that this canal runs through the most thickly populated parts of Cohoes, Waterford and Albany and serves numerous interests along the line. Cohoes has in a sense depended upon the retention of this part of the canal and the Legislature has already recognized the necessity of it and passed an act which permitted its retention, recognizing it as one of the feeders of the Barge canal system, and it is extremely important to the city of Waterford, for the Erie canal makes a junction with the Champlain canal, and therefore the part of this which refers to the Erie canal refers to the Champlain canal at Waterford, and I trust the proposal will be accepted.

Mr. O'Brian — Mr. Chairman, as a matter of personal privilege may I make a correction? I stated in my remarks a moment ago that no bill had been introduced to this effect prior to the report of the Committee on Canals. My attention has been drawn to the fact that there was such a bill. It was never brought to my attention before, and my source of information when I made that statement was a statement made to me by a member of the Committee on Canals that the matter was unheard of until it was brought up in Committee. I wish to correct my statement in that particular, because it was incorrect.

Mr. Westwood — Mr. Chairman, Chautauqua is just near enough to Erie, in which is located Buffalo, so that those of us who give attention to matters which are of current concern in Buffalo, sometimes are permitted to get a little better perspective than the man on the ground. This is the result of my observation on this situation. When the delegates were nominated to this Convention last fall, from the 48th district, Mr. Clinton, Mr. Sears and Mr. Lincoln were nominated by the Republican party. It so happened that Mr. Sears and Mr. Lincoln received the

endorsement of some society which Mr. Clinton did not receive. The fear went out that by reason of that fact Mr. Clinton might not be elected, and my reading of the Buffalo newspapers during the campaign of 1914 was to the effect that they were appealing to the voters of the 48th Senate district to be certain to vote for Mr. Clinton in order that the Buffalo interests in the Erie canal might not suffer, but might have the advantage of his long experience and friendship for the canal. He was elected, and as Chairman of the Committee on Canals has introduced this proposition. I shall support him. I understand, as Mr. O'Brian has said, that the Buffalo delegation is divided, but as I understand that division, out of ten members from Buffalo, two only are opposed to the committee's proposal, and it occurs to me therefore that both Mr. Cobb's and Mr. Sears' amendment should be defeated. Now I want to make just this one observation in addition. Much has been sent to us delegates, all of which I have read, but I find that the Buffalo *Express* under date of August 17, 1915, one of the papers which it has been said joins in the unanimous clamor against this proposal, says: The proposed amendment (referring to the Committee bill) absolutely ties the hands of the local railway commission in negotiating with the New York Central for new terminal facilities, including a new passenger station on the so-called "Terrace site." The only oral presentation of this matter to me has been on the ground that the city of Buffalo might want to lay a sewer and might want to negotiate with the New York Central to build a station. I would suggest to the delegates of the Constitutional Convention that they ought to look with great deal of,— shall I say, suspicion, upon a natural enemy of the canal, the railroad company, in trying to obtain its terminal facilities against the interest of the usual time-honored terminal facilities of the waterway.

Mr. E. N. Smith — Mr. Chairman, I offer an amendment which I have sent to the desk.

The Secretary — By Mr. E. N. Smith. On page 3, line 6, after the word "feeders" add, "But this provision shall not authorize the use for other than navigation purposes of water diverted from any water shed feeding the Erie canal." This matter is thoroughly understood by Mr. Clinton and any explanation necessary will be made by him, because I do not want to take any thing of his time.

Mr. Tuck — Mr. Chairman, I offer this amendment.

The Secretary — By Mr. Tuck: Page 2, line 26, after the word "fair" insert the word "appraisal."

Mr. Austin — Mr. Chairman, I offer the following amendment which is to strike from this bill on page 1, lines 6, 7 and 8, the words "nor shall any easement in or incumbrance on such

canals or terminals be created," and from page 3, the first three lines on that page, "property which has been or which may hereafter be appropriated for canal purposes shall be deemed to be held by the state in fee." That is the only part of this amendment in which I have the slightest interest and I want to call attention briefly to it,— I realize my time is short, and yet this subject deserves careful consideration. I want the Committee to understand what the Committee amendment would do if enacted. There is only one subject about the canals that I think I know as much about as the esteemed chairman of the Canal Committee, and that is the case to which he has referred.

Mr. Wickersham — Mr. Chairman, I think we ought to have a short additional time and I move that we rise, report progress and ask leave to sit for another half hour, the final vote not to be taken later than five o'clock.

The Chairman — I think if the gentleman will let us run for a few moments longer, we will get through and save our going to the Convention.

Mr. Austin — The case to which Mr. Clinton refers, the contract in that case was drawn by me, and it was carried to the Court of Appeals and sustained in the Court of Appeals by me and I know about as much about that case as anybody. It involved this situation: The State of New York condemned an extra right of way on the lands of the New York Central at a point called Sterling Bridge. It took a strip right out of the New York Central right of way. Of course it did not wish to absolutely condemn all the railway and cut off our right to go across the canal at that point, and an agreement was entered into whereby the State agreed to reconvey a portion of the railroad crossing the canal and to pay certain moneys to the railroad company for which it was to build a bridge across the canal at this point, and a detour to carry traffic while the improvement was going on. The railroad performed that contract in full and when it came to ask the State for its money the contract was attacked on the ground that it was unconstitutional to convey an easement in the canal and therefore it was void and of no effect. The Court of Appeals held that the contract was perfectly good, that an agreement to convey an easement alone, which did not interfere in any way with the operation of the canal, was perfectly constitutional. Now let me show you what would be the effect if this proposed language goes in the Constitution. The court said, referring to the present provision: "Its purpose and its effect is that those canals as highways of commerce, connecting the great lakes with the Atlantic ocean, should forever remain the property of the State, and under its management and in no

wise or particular be transferred to corporations or individuals. (Sweet v. City of Syracuse, 129 N. Y., 316, 333, 339.) It does not relate to the quality of the title acquired or held by the State to the canal lands, but secures to the State the control, regulation and management of the canals so long as they are channels of transportation. It does not interdict the Legislature from authorizing the appropriation of an estate less than the fee in the lands required for the canals. Were the contrary true, the frequent legislative grants of power to transportation companies to construct their lines across the canals would be constitutionally invalid, because while a grant of such power is a franchise the exercise of it by constructing the crossing and the resultant actual use and occupation is the acquisition of an easement or interest in the canal lands." In other words the Court of Appeals said in so many words that if the Constitution should require the acquisition of canal lands in fee or should prohibit the granting of easements in canal property which in no way interferes with the operation of the canal, no telephone, railroad or public service corporation could cross the Erie canal with its lines or bridges and that would be the absolute effect of these two provisions, if they are inserted. Now, I don't believe that the members of this Committee or anybody, whether a friend or an enemy of the railroads, would say that it is a proper thing for the State to prohibit them from crossing the Erie canal, and for that reason I offer these amendments.

Mr. A. E. Smith — I would like an explanation of the amendment proposed by Mr. E. N. Smith, and I would like to have the amendment read.

Mr. E. N. Smith — I will be glad to offer the explanation.

The Chairman — The Chair will state in explanation that Mr. Clinton was allowed by common consent time in which to explain that amendment.

Mr. A. E. Smith — That particular amendment? May I ask what he means in page 3, lines 4, 5 and 6, "The legislature may, by general laws but not by special laws, provide for the leasing of surplus waters of any of the state canals or canal feeders."

The Chairman — Does Mr. Clinton desire the floor in reply? The time is up, but I have told him he could have a few moments in which to explain this amendment.

Mr. Clinton — What was the question of the gentleman from New York?

Mr. A. E. Smith — I wanted to know what was intended by the matter on lines 4, 5 and 6 on page 3: "The legislature may, by general laws but not by special laws, provide for the leasing of surplus waters or canal feeders"?

Mr. Clinton — The power already exists, and the provision is intended to limit the power. If you will read the rest of it, in that connection.

Mr. A. E. Smith — Well, what do you mean by saying that it "may by general laws" but cannot by special laws?

Mr. Clinton — Because we don't wish the Legislature to take out of the hands of the canal authorities the particular leases.

Mr. A. E. Smith — Well, supposing the Legislature saw fit by a special law to provide for the development, we will say by the Conservation Commission, or under the power and authority of the Conservation Commission, the water now running over the spillway at Vischer's Ferry, would they have to do it by an act which would have application to all surplus canal water?

Mr. Clinton — They could do it by a general law which would govern the subject; but if that is not done, Mr. Smith, we would have all along the line of the canal, application for so-called surplus waters when they do not exist.

Mr. A. E. Smith — Well, it is well known there is about eight or ten thousand horsepower capable of hydraulic power at Crescent and Vischer's Ferry. It has been suggested here that when the State is ready to improve it that power may be developed for the benefit of this section of the State. Now, I feel a bit keen about that proposition, and I don't care to see anything get into this Constitution, with my approval, which is going to prevent that at any future time. That is the reason why I want to know why the law must be general when the conditions differ so much.

Mr. Clinton — Because, as I have stated, there would be applications all along the line of the canal for surplus waters, in relation to transportation, and it is perfectly evident that the Legislature can pass a law to take care of that, and at the same time protect the canal from this multitude of people.

The Chairman — The time having expired, the question before the Committee is upon the amendment introduced by Mr. Clinton.

Mr. A. E. Smith — Mr. Chairman, the amendment offered by Mr. E. N. Smith has been in no way explained to the Convention.

Mr. Clinton — It would take considerable time to explain it in detail. But I can simply say generally that a portion of the waters on the watershed which feeds the Black River have been diverted by the Black River canal, and a portion of these waters, a very considerable portion of these waters, are now passing into the reservoir formed by the Delta Dam below the Black River, and this amendment simply provides that where the water is taken from one watershed and turned over to another — this is the only case that I know of where it will have effect — that that shall not be leased, the water shall not be leased so as to take the waters

away from the natural water course where it is already being used for power purposes. It was thought without that the State might lease waters below the Delta Dam, and in order to supply those waters it would draw from the supply of the waters of the Black River down there where they have their immense power. That is all there is to it.

Mr. Cullinan — Mr. Chairman, the amendment of Mr. Smith, will it not, if enacted, prevent the State from utilizing surplus waters for the development of water power, if it so desires?

Mr. Clinton — No. It will simply prevent the leasing where it is diverted from the watershed. Now, Mr. Chairman, I don't desire to take up much time. I simply wish to say that so far as the Albany water is concerned, it is, of course, in some instances of vital interest to Watervliet and Cohoes; as I read the statute it does not prevent the preservation of the lock 16 at Cohoes. Am I correct?

Mr. Barnes — Yes, sir.

Mr. Clinton — That being so, I can see no objection to it. Mr. Tuck, did you introduce an amendment?

Mr. Tuck — Yes, sir. To provide for "appraisal", in the twenty-sixth line of page 2, after the word "fair."

Mr. Clinton — As to that amendment, Mr. Chairman, I can see no reasonable objection to it. There is an impression that the word "fair" as used here does not really accomplish the intent of the Committee. What the Committee had in view was by general laws, the fair value would be ascertained in the way that has been proposed, in the customary way, first by appraisal, and the insertion of the word in my opinion does not add anything to any extent, but it relieves the mind of some of those who might differ with me on the construction. Now, Mr. Chairman, the most remarkable argument that I have heard here to-day has come from the lips of my young friend, Mr. Franchot, supplemented by the remarks of Mr. O'Brian, that there is a controversy in Buffalo which amounts to a controversy whether the facilities and all facilities which the State should preserve for terminal purposes in that city should or should not be sacrificed for the purpose of getting, not a union station as Mr. O'Brian said — the union station is dead, and the man who killed it was the attorney for the Railroad Terminals Commission for the city of Buffalo, but —

Mr. Cullinan — How many years have they been talking about that terminal station?

Mr. Clinton — Since the — I think it was the first year of the administration of Governor Higgins. And they got a bill through which he vetoed and which was unconstitutional. The question is

whether certain people in the city of Buffalo who are personally interested and who control the trustees of the Chamber of Commerce, and who have the idea that if they do not give up the canal and the greater interests of the city of Buffalo and the interests of the State, in order to get a station — not a union station,— a local station, it will be, of the New York Central — that their business and property on Main street will be injured, and when it is said that the people of Buffalo, as my young friend has stated, are opposed to this they say something whereof they do not know. The Chamber of Commerce has been asked to call a meeting of the members to discuss the question, and yet they never have done it. They have been asked more than once. And what you have received in circulars, supposed to have emanated from the Chamber of Commerce, have emanated from that Board of Trustees and represent their personal opinion only. Now, in the city of Buffalo, there is an organization called the Central Council of the Business Men's Association. That represents a local association of business men all over the city of Buffalo in different localities. It has a membership nearly double that of the Chamber of Commerce, and twice they have pronounced in favor of this amendment. Now, Mr. Chairman, it is asserted here by my friend, Mr. Sears, for whom I have the utmost respect, in substance that they are simply trying to carry out the pronounced policy of the State of New York to abandon this part of the canal. I know the history of it. He doesn't. I know the laws, and he has failed to point out just what was done by statute. When the State Commission reported, the project was to give us a canal terminal in the Erie basin, which, I tell you, is too small for the entire traffic, and to give us a lake and canal terminal in the outer harbor where lake vessels could come and connect with the canal. The recommendation of that Committee was practically on that basis, but when we came to draw the canal terminal bill, we would not accept it and the Legislature did not accept it, because the outer harbor terminal being in doubt, although we provided for surveys and laid the groundwork for it, we did not recommend the abandonment of the portion of the canal they wished for railroad purposes. We said that the Canal Board might, leaving it to them to determine. Since then nothing has been done about the outer harbor terminal, and as the condition of the State finances exist to-day, there will not be. The State will not go to the expense, and we are reduced to this contracted Erie basin terminal. Mr. Chairman, it is for that reason that when the Act of 1913, chapter 801, was passed, at that time those of us interested in the canals were considering the question of asking the

Legislature to reserve that part which was reserved in the original act, and when that act was passed said it was a mistake and an inadvertence. It was written into the law as it stands now that the portion to be reserved was this: The existing Erie canal in Buffalo from the present location of the present guard lock to and including Commercial slip, except such portion as may be required by the United States government for the improvement of Black Rock harbor, shall be retained for harbor and canal purposes, and that retains this part. Now, Mr. Chairman, there is another proposition, too, if I may be permitted a few moments more. If they sacrifice our terminal facilities by taking this which is needed for the commerce of the canal, and giving it to the New York Central Railroad, the New York Central Railroad will control the entire front of the Erie terminal. That never should be done. I want to say one word, since something has been said about this being a local matter. If local controversies were to furnish a rule for this Convention, that would exclude the adoption of the amendments to the Constitution, two-thirds of what we have recommended would never have gone to third reading. Local controversies always arise. I want to say to the gentleman from New York that this is not a Buffalo question. It is a State question. And if you people do not help us in securing all the facilities at the western terminus of this canal for the receipt and delivery of freight through the canal, you will be violating your duty to your own city, because you will be putting on the clamps.

Mr. A. E. Smith—I honestly hope that you will see if we cannot find some way of letting the Convention understand this. I don't want to appear in the role of a fault-finder, but I don't understand that we are ever going to get any place if the Committee on Rules is going to sit and arbitrarily fix two hours on a proposition of this kind, when they themselves probably do not properly realize its importance. One hour of the two is consumed by the Chairman of the Canals Committee, and very properly so, describing it, and the rest of the Convention is given an hour. Now, if anybody suggested any such procedure as that in the Assembly the press of this State from one end of the State to the other would damn the Committee on Rules and the arbitrary methods of the House management. It was never even suggested We should have plenty of time to discuss these things. I, for one, refuse to have it shoved under my nose next year or the year after, when I happened to be in this matter, that I sat by and voted for something that tied up the State and some of its port activities. I represent a district that would be particularly affected by the literacy amendment that came up this morning,

and I was crowded into five minutes at the close of the debate. It has got to stop. The only people who can stop it are the members of the Convention themselves, by jacking up the Rules Committee a little bit. Now, I haven't any objection to the gentleman's last remark, the fixing of proper port facilities and port terminals. If he will remember, I was one of the men who went before the Governor and sidetracked in 1911 a favorite proposition of my own to build a proper office building here in Albany for the State officers, in order that the canal terminals might be submitted in the fall of 1911. There is a little more than that in what is proposed here that is not clear to me. I still say that I see no reason why the Legislature should be tied up to general laws for the leasing of the surplus waters of the canal. I don't know now that the Legislature has anything to do with that. This may be a new power. If it is a new power it should not be put in the Legislature. If the Legislature now has it, I don't remember their ever doing it.

Mr. Clinton — They have tried to do it.

Mr. A. E. Smith — Well, if they tried and had been stopped, probably they should not have done it. Now you are writing in here a power to do it. Leave it with some board or commission that knows about it. The authorities there have been seeking, when the old portion of the canal is abandoned, to make a bargain with the railroad to put the tracks down in the bed of the canal, making something in the nature of a subway tunnel, such as we have in the city. That would have to be done by a special act; either a special act — the gentleman from Erie says no. Would you pass a general law saying that where in a city a railroad runs through the main street it can be put in a canal — something like that?

Mr. Clinton — Mr. Chairman, will the gentleman allow me to make a suggestion? The idea is that the Legislature by general laws will take care of both of those things; and, in the case of the parts of the canal which are to be abandoned, they will pass a general law which will cover the abandonment of the canal. That general law will be something in the nature of the bill that went through the Legislature, and which I think should have been signed by the Governor, and will take care of Syracuse, Rochester or any other city so situated.

Mr. A. E. Smith — I cannot agree with that proposition, because you cannot take care of these different situations by a general law. I would be unwilling to allow the New York Central railroad to come into Rochester and take the bed of the canal in Rochester unless I felt that Rochester was getting a little the best of the bargain, as Syracuse would be, because at some

time in the past, those who had the giving of that franchise were short-sighted enough to allow the New York Central railroad to go right down through the heart of the city. We have that situation in New York. We have the New York Central with its Eleventh Avenue perpetual franchise, 500-year franchise. We would be willing to pay almost anything to get that back. We cannot do it. I want to have the city left in a position where, if it has made a great mistake in the past, it may make some concessions to the railroad, if you please, in order to clear up the situation in a particular place, but I do not want the State to be tied up to the proposition that, in order to give relief to Syracuse with a railroad track running down one of the principal streets, we should impose conditions upon the city such as may not apply in Rochester, for instance, where the railroad skirts the outside of the city, or any other place.

Mr. Clinton — Mr. Chairman, will the gentleman permit me to suggest that the general law passed can provide for all of that?

Mr. A. E. Smith — Well it is senseless for me to argue that with the gentleman. I hold that you can not do that by a general law. I hold that this should not be given to the Legislature at all.

Mr. Clinton — It is given to the Canal Board.

Mr. A. E. Smith — I mean here in the Convention. There should not be any such thing as that. All of page 3 and the last part of page 2 could be well left out and then let us declare a general State policy with regard to the matter.

The Chairman — The clerk will read the amendment offered by Mr. Clinton, being the first one in order.

The Secretary — By Mr. Clinton. Page 2, line 11, after the word "as" insert "heretofore". Page 2, line 14, after the word "reserved" insert "for barge canal or", and after the word "canal" insert "terminal". Strike out the word "for". Page 3, line 1, before the word "Property" insert the word "Real" and make the capital in "Property" a small letter. Page 3, line 3, after the word "fee" strike out the period and add the words "unless expressly taken for temporary purposes". Page 3, line 6, after the word "feeders" strike out the period and insert "or of any waters impounded by the construction of dams, reservoirs or other structures". Page 3, line 15, after the word "under" and before the comma insert "together with the corresponding compensation therefor".

The Chairman — The question is upon the amendment. All in favor will signify by saying Aye, contrary No. The ayes have it and it is carried. Next comes the amendment offered by Mr. Sears, which the Clerk will read.

The Secretary — By Mr. Sears. Insert on page 2, line 16,

after the word "harbor" the words "and from Black Rock harbor to Wilkeson street and Canal slip number three", and in line 17 after the word "two" insert the word "between the Erie basin and River street but excluding the portion of the canal from Wilkeson street to and including the Commercial slip."

Mr. Clinton — Mr. Chairman, I ask for a division on that.

The Chairman — The question is on the amendment offered by Mr. Sears, which the Clerk has just read. All those in favor of the adoption of the amendment offered by Mr. Sears will signify by rising. All those opposed will signify by rising. The amendment, without counting, is lost. The next is the amendment offered by Mr. Cobb of Onondaga, which the Clerk will read.

The Secretary — Section 8, page 1, line 5, after the second word "canal" insert the words "or improved barge canals". Line 6, before the word "canal" insert the word "any". Page 2, after the bracket in line 5, strike out the balance of the page and insert in place thereof the following: "When, however, in conformity with laws heretofore enacted for the improvement of the canals of the State any portions of such canals shall no longer be used or required by the State for canal purposes the Legislature may by law enacted pursuant to recommendation of the Canal Board declare such portions of the canals to be abandoned, whereupon they shall no longer be subject to the prohibition herein contained. The Legislature may thereafter provide for the sale, lease or other disposition of the portions of such canals, so abandoned by general laws, which shall secure to the State the fair value thereof. Any such sale, lease or other disposition shall be subject to the approval of the commissioners of the land office".

The Chairman —All those in favor of the amendment introduced by Mr. Cobb will signify by saying Aye, contrary, No. The amendment seems to be lost. It is lost. Next is the amendment offered by Mr. Mealy, which the Clerk will read.

The Secretary — By Mr. Mealy. Page 2, line 16, after the word "harbor" insert as follows: "those portions of the Erie and Champlain canals heretofore reserved by chapter two hundred and forty-three of the laws of nineteen hundred and thirteen".

Mr. Mealy — Mr. Chairman, I would like to ask the Chairman of the Committee on Canals if he accepts the amendment?

Mr. Clinton — I have already stated in somewhat loud tones that I see no objection to the amendment. Personally, I accept it, but I have no authority to accept it for the committee. I am quite sure that the committee would not object to it.

The Chairman — The question before the committee is upon the adoption of the amendment by Mr. Mealy. All those in favor will signify by saying Aye, contrary, No. It seems to be carried. It is carried.

The next is the amendment offered by Mr. E. N. Smith.

Mr. E. N. Smith — I would ask the Chairman of the Committee whether he accepts the amendment?

Mr. Clinton — I think that is a little unkind. I think when I said there was no objection to that amendment I spoke in a little louder tones than I did in the case of the previous amendment.

The Chairman — The question before the Committee is the adoption of the amendment offered by Mr. E. N. Smith. All those in favor will signify by saying Aye, contrary, No. It seems to be carried and it is carried. The next is the amendment offered by Mr. Tuck of Monroe.

The Secretary — By Mr. Tuck. On page 2, line 26, after the word "fair" insert the word "appraised".

The Chairman —All those in favor of the amendment offered by Mr. Tuck will say Aye, contrary, No. It seems to be carried and it is carried. The next is the amendment offered by Mr. Austin.

The Secretary — Page 1, lines 6, 7 and 8, strike out all in italics following the word "constructed" in line 6. Page 3, strike out lines 1, 2 and 3.

The Chairman —All those in favor of the amendment offered by Mr. Austin will signify by saying Aye, contrary, No. The amendment seems to be lost and it is lost.

Mr. Rodenbeck — There should be a slight correction of the title of the amendment in order to avoid reprinting, should the bill go to the Committee on Revision, and I suggest this addition to the title — merely a formal matter.

The Chairman — The Clerk will read the amendment offered by Mr. Rodenbeck of Monroe.

The Secretary — Page 1, amend the title by inserting after the word "constitution" the following: "in relation to the disposal of canal terminals and surplus waters of the canal and the title to state appropriations".

The Chairman —All those in favor of the amendment offered by Mr. Rodenbeck of Monroe will signify by saying Aye, contrary No. It seems to be carried and it is carried. The question before the Committee is upon the adoption of the whole section as amended. All those in favor of it will signify by saying Aye, contrary No. It seems to be carried and it is carried. The next in order is general order No. 38, Public Utilities. The Chair recognizes Judge Hale.

Mr. Wickersham — May I offer an amendment?

The Chairman — Mr. Wickersham offers the following amendment, which the Clerk will read.

The Secretary — By Mr. Wickersham. "There shall be one or more public service commissions. Commissioners shall be appointed by the governor by and with advice and consent of the Senate. The Governor may remove any commissioner for cause after service upon him of a written statement of the alleged cause and an opportunity to be heard thereon. Until the legislature shall otherwise provide the existing commissioners are continued with the jurisdiction and powers at present vested in them".

Mr. Wickersham — Mr. Chairman, simply to explain. There has been omitted from that what should have been included: Strike out all after line 3 and insert in lieu thereof the portion just read.

Mr. J. G. Saxe — Mr. Chairman, I would like to ask Mr. Wickersham, for the purpose of clearness, if this is a complete substitute.

Mr. Wickersham — Yes.

Mr. Olcott — Mr. Chairman I would like to ask a question of Mr. Wickersham with your permission. This is the paragraph taken from the proposal offered by the Committee on Governor and Other State Officers?

Mr. Wickersham — No, it is substantially the amendment which I offered on the floor when this matter was last under consideration, somewhat shortened. I simply offer the amendment now and after Judge Hale has finished his statement I shall ask to speak on it.

Mr. Clinton — I rise to a question of privilege.

The Chairman — The Chair recognizes Mr. Clinton of Erie on a question of privilege.

Mr. Clinton — I understand that I am accused of saying in the argument on the canal amendment that my most highly respected friend, Mr. Sears, stated that he was in favor of the abandonment of the canals, or something of that effect. I wish to say that I did not intend to state anything of the kind and I ask to have any such statement expunged from the Record.

The Chairman — The Chair distinctly understood the gentleman from Erie to say that he had the highest respect for Mr. Sears.

Mr. Hale — I think, Mr. Chairman, I ought in fairness to give way to General Wickersham. Unless I am to occupy the attention of the Convention or attempt at least to do so twice, I ought to be allowed to reply. Now, suffice it to say that this is not at all the proposal of the committee that has had this matter under care and

study since the beginning of the Convention. What we wanted to do, if possible, was to protect the public service commissions of the State of New York from being treated as other departments of the State government have been treated in the past, not only in the recent past but in the remote past, as the football of politics. In opening I called the attention of the Convention to the history of the Board of Claims and Court of Claims. I referred to the history of the Highway Department. If you are to have one commission or two commissions, according to the will of the Legislature, you invite the same treatment of the public service commissions that has in fact, been given to the Board of Claims, the Court of Claims, the Highway Commission, the Labor Department and others. Now that is not what the committee wanted and I believe the committee is unanimously against the proposal of General Wickersham in that respect. Now, there were other reasons why we thought the commission ought to be put into the Constitution, but the principal one, I am frank to say, was to protect it from political attacks, from attacks not on the merits, from attacks that did not go to the character of the commissioners, whether they were honest or dishonest, whether they were able to discharge their functions or not, whether they were able to discharge their functions or would not, and so forth.

Mr. Cullinan — Mr. Chairman, you are a member of the Committee on Governor and Other State Officers?

Mr. Hale — Yes, sir.

Mr. Cullinan — Now, that committee is about to conclude to constitutionalize the public utilities commission. Now, you are asking that in an independent bill. Why this double-barrelled effect?

Mr. Hale — Not at all. The provision of the report of the Committee on Governor and Other State Officers was made out at a time when it could not be known what the Convention would do with the proposal of the Committee on Public Utilities and in a session this morning it was expressly recognized that the matter of the Public Service Commissions would have to be dealt with by the Convention to-day and the Chairman of that Committee was authorized to take whatever came out of the Convention, if anything did, and incorporate it in the report of the Committee on Governor and Other State Officers. Now, I think I had better yield the floor at this point and hear what is to be said in favor of the change, which is an entirely radical change; that is, a departure entirely from the conviction and judgment of the committee that has had this matter in charge.

Mr. Wickersham — When this matter was under discussion before I offered on the floor substantially the amendment which I

have offered here to-day. The matter of the report was discussed for some time in this committee and the report was recommitted to the committee. I think I stated correctly the feeling of the majority of the members of the Convention, when I said the report of the committee did not meet with the favor of the Convention. It was recommitted and has been brought back with substantially little change, no change of importance as I read it. Now, what does this report seek to do? It first proposes to perpetuate two commissions. Mr. Chairman, I do not think that we have gone far enough in the experiment of the Public Service Commission to say in the Constitution that for twenty years more there shall be two commissions. It may be that two commissions will be found to be expedient. I don't think that we should tie the hands of the Legislature for the next twenty years by providing that there must be two, and I think I voice the general expression of this body, as to which utterance was given when this matter was last under discussion, in saying that it was generally felt that it was inexpedient to provide in the Constitution that there should be two commissions. Then, Mr. Chairman, the next provision in this report is that any commissioner may be removed by the Senate on the recommendation of the Governor, stating the grounds on which such removal is recommended. I do not think that is a very wise provision. Commissioners should be subject to removal by the Governor on charges. The removal by the Senate in a case where there should be a difference politically between the Governor and the Senate might lead to a deadlock and to conditions which would be wholly at variance with the public welfare. Then there is a provision which is in effect what I have put in my provision, although it is somewhat more fully expressed, that "the commission shall have the jurisdiction, powers and duties it now has, and nothing herein contained shall prevent the Legislature from enlarging, or changing such jurisdiction, powers and duties," and then there comes a limitation upon the powers of the Legislature, which it seems to me to be very inexpedient to adopt: "The Legislature shall not enact any law prescribing a rate or charge or a standard of service, equipment or operation for any public utility until after it has received from one of the commission its report thereon made after investigation and hearing, at which interested parties may introduce evidence, or until after the expiration of such time following a request for such report as may be requested by law."

Now, Mr. Chairman, I have already stated that in my opinion one of the most useful advances in government which has been made in recent years has been the creation of commissions of this type to deal with those multitude, those manifold questions which,

before their creation, came before the Legislature to importunate and to vex legislative consideration. It is a distinct advance in government; it is an advance which should be encouraged; it is an advance which has been encouraged. It is the establishment of an institution which has taken from the Legislature the consideration of a number of questions with which the Legislature had to deal with, was obliged to deal inadequately and unsatisfactorily. But, Mr. Chairman, it is a very different thing to say that the Legislature shall never act upon any subject embraced in this section until after it has referred the matter to the commission and got a report from it. If the Legislature is ever called upon to act with respect to those matters, it will be, because there is a peculiar exigency. In that event it should not have its hands tied by any such provision as this. Mr. Chairman, I say we shall have gone as far as the present condition of the law and practice relating to the control of public utilities through commissions of this character warrant if we put into the Constitution a provision that there shall be one or more public service commissions, composed of commissioners appointed by the Governor, subject to removal on charges, and that for the present and until the Legislature shall otherwise provide, the commissioners in office shall be continued with powers and duties at present devolved upon them. Mr. Chairman, I deeply regret to differ with the Committee that has had this subject in hand. I should have hesitated to do so, but when this matter was up before, I submitted, before I introduced it, my proposed amendment to the Chairman of the Committee and I introduced it with his entire acquiescence and consent. The matter was opened to free debate here. It was sent back to the Committee. The Committee, I think, has not correctly interpreted the views of the members of the majority of this Convention in their report, and, therefore, I feel free to reintroduce my amendment for the purpose of giving expression to what I believe to be the thought of a majority of the delegates, which is certainly my own thought on the subject.

Mr. Hale — When you say, Mr. Wickersham, that I freely conceded the matter of introducing your amendment, you don't mean to say that I stated to you that I favored it?

Mr. Wickersham — Oh, no, not at all, Mr. Chairman, I said that before introducing it that I submitted it to the delegate as the Chairman of the Committee and asked if he had any objection to my doing so, and he replied he had not, and, therefore, I felt free to introduce it, as I do now. I only explain that because, generally, I think we all feel it is an invidious task to attempt, after a committee has considered the subject and brought in a report, to introduce an entirely new provision regarding the same

subject, but I think, under the circumstances of this case, in view of the debate when we were here before on this same matter, I may be pardoned for having submitted, with something of insistence, it may be, a formulation of the views which I hold with respect to this subject.

Mr. Wagner — My personal view is that the Public Service Commission should not be made a constitutional office at all. And, as a matter of fact, if we adopt the amendment offered by General Wickersham, we might just as well leave it out of the Constitution entirely, because, under the Proposed Amendment offered by him, it leaves the entire matter to the Legislature even, in my judgment, to the extent of abolishing the Commission. So I think it would simply be a useless provision to put into the Constitution.

Mr. Wickersham — No, my provision is that there shall be one or more commissions.

Mr. Wagner — Well, then, latterly you provide, until the Legislature shall otherwise provide, the existing commissions are continued, with the jurisdiction and powers at present vested in them.

Mr. Wickersham — That is in reference to individual commissioners.

Mr. Wagner — It is subject to both constructions, but whatever construction you accept, the Legislature can go to the extent of absolutely stripping the commission of all power and jurisdiction, and it seems to me that a better policy rather than having this, to compel the Legislature to continue the office without power, it would be a better policy to leave the whole matter where it is now, with the Legislature. Now, I think it was to some extent at least as a result of my discussion of the language of the last proposal, that the proposal was sent back to the Committee for correction, the point being that under the language of the proposal the Legislature could not in any way change, materially change the power of the Public Service Commissions which they now exercise, and that, of course, it was felt by almost the unanimous sentiment of this Convention was something we ought not to do, to continue this commission and prevent the Legislature from changing to any material extent the powers which they now exercise. Now, my point is that, even this proposal, though it is couched in different language, makes very little change from the proposal which we had before us, and even in this proposal the Legislature is restricted in changing in any way the powers or duties of the present commissions. So that it is practically powerless to interfere with the duties and jurisdictions they now exercise. Now, the words are "nothing herein contained shall prevent the Legislature from enlarging, restricting or changing such

jurisdiction." Now, the correct interpretation that I think anyone will place upon those words is that the Legislature may change the jurisdiction, provided it enlarges it or restricts it. Now, "restrict" is merely to hold something back, but that is not reducing. So that even under the word "restriction" you could not reduce the power and the jurisdiction which the Public Service Commissions now enjoy. You may hold them back so they may not go any farther, or you may enlarge or add to the powers as much as you please. So that in effect the provision that we now have before us accomplishes, in my judgment, practically the same object, if it be an object, which the original proposal did, namely, that you are building a public service commission here with powers that are extraordinary, and not only delegated with the Legislature having the reserve power to take away from them any power which they exercise, or extend it, or even exercise a concurrent jurisdiction with them. But here, by these words, you make them an independent body with these legislative and judicial functions which they now exercise — and the Legislature is prevented from ever, under this provision, interfering with an exercise of those powers. Now, I think that would be an extraordinary provision to put in the Constitution.

Mr. F. L. Young — How do you interpret the word "changing"?

Mr. Wagner — Changing to the extent of enlarging or restricting, and you cannot put any other meaning on it, because, let me say to the distinguished gentleman from Westchester, if you meant to give the Legislature absolute power, as I pointed out the last time this matter was up, it is the simplest thing to do, by simply adopting the language proposed by General Wickersham, and which is language similar to that which I proposed the last time, simply by saying, they shall exercise the jurisdiction, powers and duties which they now exercise, unless the Legislature shall otherwise provide, and then you have got it all, but that is not what is wanted; and, therefore, the words are used, "enlarging, restricting or changing such jurisdiction," and, unquestionably, a court will interpret that to mean that they may change within a circle of restriction or enlargement. As I say, the word "restriction" does not permit you to take away. It simply means to hold in check. And enlargement means you may add to it just as much as you like. So that, while in different words, in my judgment, you are practically repeating the provisions of the last article as proposed. Now, the next provision does show how the hands of the Legislature are tied in this provision, and I agree with everything that General Wickersham has said, that it would be a most unhealthy thing for the people of this State to

have the Legislature restricted as we propose by this provision. We had an instance only a year ago where the people of this State secured a large reduction, a very beneficial reduction in our telephone rate, which, after the investigation, was conceded by the telephone company without further contest, but it was accomplished how? By the reserve power of the Legislature, the appointment of a Committee, and the matter before that had been before the commission for an entire year. They were unable to give any decision or to go deeply into the question, because, I think, of the lack of funds; and so with many other things which were before that commission. I do not think that you can attempt to suggest that they were not doing their work as faithful as they could, considering all the work which was devolved upon them. But, when this Committee was appointed it itself went into the question in New York city and within four months after the Legislature had begun its work there was a reduction of the rates within the Metropolitan district. So that it is a very healthy thing to have this reserve power in the Legislature and it is a mistake to take it away. Now, what do you say here? In the first place, you provide that the Legislature shall not pass an act unless it has received a report, after an investigation, from the Public Service Commission. And what is the other alternative? "Or until the expiration of such time following the request for such a report"— mind you, the words —" following a request for such a report as shall be prescribed by law." What does that mean? An act is introduced into the Legislature and a report is asked for by the Public Service Commission. Sixty days go by and there is no report. Then it says you may act after the expiration of time following such a request for a report as may be prescribed by law. So you cannot prescribe by law the time within which such a report shall be made until after the Legislature makes its request. That ties the legislative hands up more than I think even the Committee intended, but that is apparently the meaning from the reading of the language.

Mr. F. L. Young — Not for the purpose of entering into a controversy, but for the purpose of shortening it, if that is possible. I understand that Judge Hale has informed you already that he consents to the striking out of the last paragraph of this proposition.

Mr. Wagner — Yes.

Mr. F. L. Young — Then, why debate it further?

Mr. Wagner —Well, I take it that the decision of one man is not final in this Convention.

Mr. F. L. Young — But, if it is consented to by the chairman of the Committee I think that should have some weight.

Mr. Wagner — The chairman of the Committee has no right to make that concession for the entire Committee.

Mr. Deyo — The chairman of the Committee cannot make that concession for the whole Committee.

Mr. Wagner — There you are, Mr. Young, there are other men who are opposed, so I think we had better understand what this proposal does. So here you are, you are building up a remarkable commission with remarkable powers and I don't think it is intended that that shall be done. I don't think it is intended by the members of this Convention to build up such a commission, unknown in the history of our State, with such extraordinary powers which cannot be interfered with by legislative enactment and even the concurrent power of the Legislature with reference to rates can only be exercised under the most difficult circumstances and after overcoming extraordinary obstacles. And I hope that we will decide finally that we had better leave well enough alone. While I can see that we must always have a commission, an investigating commission of that character, so that we may have the best information possible before deciding upon a certain rate, yet it has not so built itself, I may say, into our whole fundamental government, our theory of government, as to make it a part of our fundamental law; and so let us have experience and experiment a little farther. Better methods may be devised, and if they are, the Legislature ought to be permitted to respond at once to a public sentiment and public demand and change the law in conformity with that demand.

Mr. Root — Mr. Chairman, I sympathize very fully with the most of what both Mr. Wickersham and Mr. Wagner have said. I do not think that we are in a position to legislate in detail about the Public Service Commissions, and that we ought to leave that to the Legislature which created them. There is a committee of the State Senate, I understand, that is considering that subject.

Mr. Wagner — Yes, there is.

Mr. Root — They know a great deal more about it than I do, and I do not doubt that they know a great deal more about it than most of the members of the Convention. The method of exercising the jurisdiction of these commissions is still in the stage of development. But, I do not think we should lose the opportunity to put into the Constitution enough to make it impossible for any Legislature ever to abandon the system of regulating public service corporations through a commission or commissions whose business it is to deal with the subject, and to go back to the old method of leaving public service corporations unregulated, except by the passage of laws in the Legislature. The public service commissions, both in this State and in other States and in

the nation, were created to meet and deal with very great and real evils. In this State before we had that system, if a man was unjustly treated by a railroad, he had no recourse, except a lawsuit that was beyond his means, or a complaint to his representative in the Legislature. A lawsuit by a single individual of moderate means against one of these great corporations was hopeless. The complaint to his representative in the Legislature would result in the introduction of a bill founded upon, perhaps, just complaint, and those bills accumulated. A great deal of the time of the Legislature was taken up by them. The duty of holding these corporations accountable was a burden upon the Legislature which it ought not to have been called upon to perform. But, worse than that, this multitude of bills, founded upon just complaint, brought after them a multitude of strike bills introduced for the purpose of holding up the corporations, holding them up and calling them down. Many of us can now remember the dreadful days of the Black Horse Cavalry which came as an incident mainly, to the performance of this duty by the Legislature, and, further still, the fact that the great transportation companies were being attacked, the great public service corporations were being attacked in the Legislature, justified them in their own minds in going into politics and electing, or furnishing the money to elect, members of the Senate and Assembly. Good men, good citizens, honest law-abiding men justified themselves in the directorates of these railroads and other public service corporations in spending the money of the corporations to elect Senators and Assemblymen who would protect them against strike bills. The whole system became a scandal and a disgrace, and it was to remedy that here in New York and all over the country that this system of regulation by a commission created by law was established. The results have been most beneficent. No greater reform has been wrought in the public life of our country than has been wrought by the transfer of this attempt to regulate these great corporations from the legislative bodies of the country to public service commissions. Now if a poor fellow is injured by a railroad company, he has somebody to go to, and the company can be held accountable. Now there is no cloud of strike bills in the Legislature. Now there is no justification for the New York Central or the Erie or the Delaware and Hudson or the electric light companies or the telegraph or telephone companies to go into politics and spend their money with the idea that they must protect themselves in the Legislature. We can regard with greater respect the government of our State than we could. We never should permit a return to the old and vicious system. We should not now lose the opportunity to make the return impossible, because men forget. The generation that knew the old,

evil days of the Black Horse Cavalry is passing away and when it is gone a new generation which knows not the cause for the creation of this system will arise, and, ignorant of the evils to which they would be returning by destroying it, they may wipe it out. So I hope that we, who know the reason for the creation of this system of regulation by commission will put into this Constitution enough, just enough to make it impossible for any Legislature ever to destroy and return to the old, evil days, leaving the real legislation for the further development of the system to the Legislature.

Mr. F. L. Young — I addressed the Chair for the purpose of making a motion relative to the bill introduced by the committee, namely, I move as an amendment to the bill that the last paragraph on page 2 be stricken out in its entirety.

The Chairman — That, I understand, Mr. Young, is introduced in the form of an amendment?

Mr. F. L. Young — Yes.

Mr. Buxbaum — I sent to the desk a proposed amendment to the substitute offered by Mr. General Wickersham.

The Chairman — Has the amendment been sent to the desk?

Mr. Buxbaum — Yes.

The Secretary — Strike out after the words "service upon" in line 4 the word "him" and substitute "such commissioner".

Mr. Brackett — I offer another amendment to the substitute proposed by General Wickersham.

The Chairman — The Clerk will read to the committee the amendment or substitute offered by the gentleman from Saratoga.

Mr. Wickersham — Mr. Chairman, I am going to call the attention of the Chair to the hour. Before doing so, I ask that any other amendments that are to be handed up be sent to the desk, if they are ready now, and then I will move that the committee take a recess until half-past eight o'clock.

The Chairman — The Clerk will read, before we take a recess, the amendment sent to the desk by Senator Brackett.

The Secretary — "The Legislature shall have power to fix the compensation of commissioners, but such compensation of each member in the second district shall never be more than seven thousand five hundred dollars."

The Chairman — Are there any more amendments?

Mr. Bernstein — Mr. Chairman, I offer the following amendment:

The Secretary — By Mr. Bernstein. Page 1, line 4, strike out the word "two" and insert in place thereof the words "one or more." Page 1, line 4, after the word "commissioners" insert "as the legislature may provide".

The Chairman — The motion by Mr. Wickersham is in order, that the committee take a recess until eight-thirty. All those in favor will signify by saying Aye, contrary No. It is carried. Whereupon, at 5:50 P. M. the committee took a recess until 8:30 P. M. of the same day.

AFTER RECESS — 8:30 P. M.

(Mr. Stanchfield in the chair.)

Mr. Landreth — Mr. Chairman, just before recess I sent to the desk a proposed substitute for the report of the Committee on Public Utilities. I should be glad to have that read and would then ask permission for two or three moments to explain the features of it.

The Chairman — The committee will come to order. The clerk will read the amendment proposed by Mr. Landreth of Schenectady.

The Secretary — By Mr. Landreth, on page 1, line 4, before the word " public " insert " Between January first, nineteen hundred and seventeen, and March first, nineteen hundred and nineteen, a ".

Mr. Landreth — Mr. Chairman, the Clerk has read only the introductory portion of the amendment. The amendment is the same as was offered a few nights ago when this matter was before the Convention and I desire to have attention drawn to a few features of the amendment as proposed. I heartily endorse the desirability of putting into the Constitution a sufficient safeguard so that we shall never lose our present progress in the matter of regulating public utilities. I believe we have before us a sufficient range of improvement to warrant leaving those constitutional provisions in very general terms so that we may acquire the benefit of observation and experience. I do feel, however, that we should get away just as soon as possible from the theory, which I believe to be wrong, that we must have two public service commissions. I think that one good commission is better than a dozen, better even than two commissions. Not that the present commissions are not good, but it was brought out some time ago on this floor that 85 per cent. of the duties of the Public Service Commission of the first district are those of construction. I see no more reason why the State of New York should enter into the city of New York and direct and design its public improvement than that the city of New York should go to Buffalo and determine how its water supply system should be constructed.

Mr. Reeves — Will you kindly tell us how this section will read with your amendment?

Mr. Landreth — I will ask the clerk to read.

The Secretary — By Mr. Landreth, Article V of the Constitution is hereby amended by adding a new section thereto, to be appropriately numbered and to read as follows: "Between January first, nineteen hundred and seventeen and March first, nineteen hundred and nineteen, a public service commission of five members shall be appointed by the Governor by and with the advice and consent of the Senate. Each commissioner shall hold office for ten years. The terms of the commissioners shall be so arranged that the term of one member shall expire upon the first day of February in alternate years. Each commissioner should have had experience in connection with public utilities which would fit him for the duties of the office. The commission shall regulate and supervise all common carriers, all water supply, irrigation, drainage, gas, power, lighting, heating, intelligence transmitting and other public utility corporations operating within the limits of New York State, including similar activities on the part of any other State department or political subdivision of the State. The removal by the Governor of any commissioner should be made only after the filing of charges and after affording the accused an opportunity to be heard in the matter. A successor to a commissioner who has been removed should be appointed to fill the unexpired term. Vacancies caused by removal or otherwise should be filled under conditions similar to those governing original appointment."

Mr. Landreth — Mr. Chairman, I believe that one commission would conduce to uniformity and economy. One commission, when relieved of much of the duties now intrusted to commission No. 1 and when relieved by a second aid which I will mention later will be amply adequate in its capabilities of regulating and supervising the entire public utilities of this State. Although many States of the Union have already introduced the policy of State regulation of private, corporate,— of public utilities, no State has thus far provided two commissions. In the present instance, great economy would result from one commission. The salaries of the New York commission, district No. 1, paid by the State, amount to $91,000. If that relief were given it would furnish means by which the State could aid this single commission in providing a feature which I will now mention, which I think will come to receive attention in the near future, and that is, to-day President Root spoke strongly and convincingly of the great improvement which had followed the introduction of State legislation of public utilities in this State. There is another step which may be taken; that is, to extend the usefulness of this commission so that it will get closer in touch with the people, so

that the matters of complaint which are now sent through formal procedure of hearings, will be obviated. I have in mind, in imagination at least, a plan by which a commission would be able to establish in the cities, at least in each of the larger cities of the State, twenty or more, a local inspector or judge with preliminary powers of inspection and approval to whom should be submitted local complaints. Of course, it will be necessary to have appeal from the ruling of that local officer made available, but the great volume of the complaints that are made are those which will be adjusted by this local officer, thus relieving the commission of a large volume of business. When relieved of this volume of business and the present work of construction of transportation facilities in New York city, there is no reason why one commission should not be adequate. This bill provides the skeleton of a system, but it has included one feature which the present law and the report of the Committee does not include, as I understand their report. That is, it is proposed that this commission should regulate and supervise the activities carried on by any other branch of the State in the line of public activities and also similar activities carried on by any city. As an illustration of the former: Two years ago, and again a year ago, we had the proposal to initiate a plan of State ownership of hydro-electric development. If that should come, there should be some commission by whom that should be regulated.

Mr. F. L. Young — In the discussion up to this time there are several propositions. The first proposition, and the one of first importance, is whether or not the public service commission shall be constitutionalized. I regret to say that in my conversations privately with some of the delegates I have detected a very strong feeling that in the present circumstances there is no need of establishing a public service commission by the Constitution. There seems to be a little fear that we may over-reach, and that the matter can be left properly to the Legislature. I do not sympathize with that idea. The need of a public service commission is as strong as human nature. There is a conflict between the public service corporations and the public, and we may as well recognize it. The public service corporations will take from the public all that they can get. Let us admit that frankly. The public will take from the corporations all that they can get, and at the lowest price. Let us admit that.

Now, in the very nature of things, there must be an arbitrator and the need of the arbitrator instead of growing less will grow greater as the years go by. As our cities increase in population and in importance and as our transportation facilities are increased, and they must increase, there will be a great reason for

what we might call a special court to do justice between the people who have invested their money in transportation and other Public Service Corporations and the public who use them. I am absolutely convinced, that public policy requires that a Public Service Commission, a lasting and continuous arbitrator between the public and the Public Service Corporations must be established. I think those who have had any experience in the Legislature are convinced that such an institution must be preserved. Now, that leads me to speak of the different propositions that have been put forward here relating to Public Service Commissions, whether they are to be one or two. I am not prepared to say that one Public Service Commission cannot do all the work that is required in the State now. There are those who are better qualified than I to speak on that subject, because they know more about the work that is to be performed, although I have had some experience in that work too. But, Mr. Chairman, I think it would be a very questionable procedure for us to say in the Constitution that there shall be one or two Public Service Commissions. The difficulty with our public boards in this State heretofore has been that they have been made the football of politics. And with a board such as the Public Service Board, five men, at high salary, and with a host of employees, we cannot be too strict in laying down a rule which will prevent those Public Service Corporations from becoming the football of politics.

Mr. Brackett — May I ask a question? I would like the gentleman to state just what he means by saying the Public Service Commissions have been the football of politics.

Mr. F. L. Young — They have not. I say other boards have. I am speaking to the question of whether or not there should be one or two, an alternative proposition before the Committee. I have had some little legislative experience, and I know what will happen if that language is put into the Constitution. If there is an administration that considers the Public Service Board, one Public Service Commission for the whole State enough, it is the easiest thing in the world for the succeeding Legislature of a different political complexion to establish two, and have two new commissions appointed, with new personnel and new duties to perform. On the other hand, if it reads that we are to have — if two shall be established and a succeeding administration should come in and get these offices, I can see what will happen. The one thing that we can count upon with certainty is that human nature is the same. The two would be abolished and a new one would be created with a new personnel. We must decide, and we must decide now, if you put it in the Constitution, whether we are to have one board or two boards, and let the Constitution

state to that effect. Now, what power are we going to give to the boards? Mr. Chairman, is my time up under the ten minute rule?

The Chairman — You have yet two minutes.

Mr. F. L. Young — What power are we to give to these boards? Some of you think that the establishment of the present Public Service Commission has kept these Public Service Companies out of politics and out of the Legislature. That is a mistake. I sat here in this House once when we had the bitterest fight in the whole session, after the Public Service Commission of the first district had made an order regulating fares. Some zealous members of the Legislature, believing that they could capture some votes in their own vicinity, grabbed the order of the Public Service Commission and incorporated it into a bill and tried to force it through the Legislature here, establishing a rate of transportation, notwithstanding the fact that that rate was then being litigated in the court, thus ousting the corporations from their day in court. I believe we will always have trouble with this proposition until the matter is taken absolutely out of the hands of the Legislature. That may be heresy, but it is my profound conviction. I never sat in a Legislature that was competent to fix rates, and I have sat in some very intelligent bodies. It requires evidence to know about rates, and it requires evidence to be presented to a court not dependent upon election at the hands of the people, if you want independence of action. It is for that reason that I have offered an amendment here striking out the last paragraph of the proposition submitted by the Committee. Now, I would like to see that done, and one other thing, Mr. Chairman. I would like to see this Convention put the whole matter of the fixing of all kinds of public service rates in the hands of the public service board. I would like to see the Constitution state that immediately upon the signing and filing of the orders of these commissions, their order should become effective and remain effective until modified or reversed by the proper action of the court.

Mr. Bernstein — Mr. Chairman, I find myself in full accord with the idea as to treatment of this subject that has been presented by the distinguished President of this Convention. I believe that the Public Service Commission or Commissions should be constitutionalized. The tendency of the times, the temper of the people, is always towards the maintenance of public service commissions to treat with the various subjects relating to the fixing of rates and fixing of standards. It is only a few years since we have entered upon a policy of having these commissions do that work. So far as we can see at the present

time, that tendency to the maintenance of commissions for that work will continue for a great number of years. As Mr. Young said, there is great danger, there is temptation in permitting the Legislatures, as they come and go, to make footballs of these commissions. We have seen that sort of thing in other departments of State and in other activities of government, and there is no reason to doubt that the exigencies of politics and conditions that may arise will lead to legislating out the commissions, to the change of names, the change of functions or to something else that will throw one commission out and put another commission in. I cannot follow the reasoning of my friend, Mr. Wagner, on this question. Mr. Wagner has raised his voice loudly and eloquently in the past in defense of the principle that will prevent a Legislature, for political reasons, to throw or legislate out commissions and officials. The party to which he belongs is supported probably more than any other party from that sort of legislation. I believe that twenty years, which is the ordinary life of a Constitution, is not such a long lapse of time that we cannot afford to place in the Constitution a commission or a body with the functions that are now possessed by our commissions.

Now, Mr. Chairman, starting out with the proposition that these commissions should be placed in our Constitution, fixed in the fundamental law, I say we should not go beyond that. The work of our commission has been somewhat experimental. We are still in a stage of development. Year after year new ideas may come up involving the conduct of these commissions, involving the powers and the functions and the duties of these commissions. I think we ought to trust our Legislature to deal with these things as they arrive. So I say, Mr. Chairman, if we constitutionalize these commissions, I do not believe we ought to go one step farther, or that we ought to ask this Convention to place in the fundamental law the functions and the duties of these commissions. Mr. Chairman, I have handed up an amendment which I believe follows the lines of the amendment submitted by General Wickersham to this extent, that it gives the Legislature the power to say at any time in the future whether there shall be one or more commissions. At the present time we have found a system of two commissions to work well. It may possibly be, as Mr. Smith told us the other day, that the Commission in the First District will have completed the bulk of its work so that the remainder of its work can very well be taken up by the other Commission. It may possibly be that the scheme of the Legislature, following the wishes of the people in the future, may require the creation of commissions in various parts of the State, or commissions to take up various functions of our public

utility corporations. I believe that we ought to give them a free hand, and, for that reason, Mr. Chairman, if my amendment is not adopted, I shall take great pleasure in supporting the amendment offered by General Wickersham.

Mr. Mandeville — Our President has said, as only he can say it, enough to bring us all to the conclusion that we should put something into the Constitution that will take public utility corporations out of politics and that will take the commissions out of politics. I think that is conceded by us all, certainly after listening to the magnificent address of President Root. There are two propositions before this Committee on which we must act. I agree with Senator Wagner when he said the proposition submitted by General Wickersham might be just as well left out. The two principles we wish to establish, if we meet the views expressed by Mr. Root are, first, to create a commission that is subject to no political control or legislative tinkering; and second, to create a commission that is to protect them in its work so that it accomplishes the object it is created for. Of what purpose is it to mention and describe the evils that existed before the commissions were created, of what purpose is it to say we should put something into the Constitution, if we write something into the Constitution that does not accomplish the object sought and does not remedy the evil that should be remedied? Neither of the propositions here says anything about salary. To those who object to the amount of the salary, I point out that neither proposition says anything, but leaves it entirely to the Legislature. Both propositions agree upon the method of appointing. The only thing I wish particularly to call attention to is that Mr. Wickersham's proposition says there shall be one or more public service commissions. Now, the very purpose of putting it in the Constitution is to provide some measure that will prevent its being legislated out of office and into office again —

Mr. Wickersham — The very purpose of my amendment is to avoid restricting it to the two existing commissions and to enable the Legislature, if it shall be so advised, to combine them into one.

Mr. Mandeville — The language is that there shall be one or more public service commissions. If the intention of the Legislature is good, we need nothing in the Constitution. If we are to provide against legislative interference, this provision does not do it, in my judgment, because it may create one commission and then destroy it by creating two, changing it about with the change of parties. The Committee thinks that two commissions should continue; that there never will come a time when we will

not need two commissions in this State; that surely we ought not to have more than two; that the commission which deals with problems in the city of New York should be a commission by itself, and the commission that deals with the problems up the State should be another commission. That has worked out well in the past and we think it should be continued.

Mr. Schurman — Will the gentleman state whether he had evidence before the Committee that, after the work of construction is completed in New York city, there will still remain work enough for a separate commission in that city?

Mr. Mandeville — I think the evidence before the committee was that the work would not be finished; that, as fast as one construction was finished, they would take up another. As we leave the salaries to the Legislature, the question of expense would not be material, because, if there was a scarcity of work, they could reduce salaries and the two would be proportionate. I shall take but a few moments more. I think the first principle is not accomplished by Mr. Wickersham's bill; that it still leaves the whole question subject to legislative interference, and that the committee's proposition, which says there shall be two commissions, is the only measure that will accomplish the purpose that was so ably expressed by our President. The only other difference between Mr. Wickersham's proposition and this is that the public service commissioners are continued. We do not wish to be accused of passing ripper legislation, that we are talking against here. I have no interest in the present commission but there should not be any ripper legislation in this body. The whole general trend of this body is not to interfere, so we leave the public service commissioners as they are, subject to removal by the Governor with the advice and consent of the Senate. Mr. Wickersham's proposition says that removals shall be made by the Governor alone, upon charges and after hearing. We say that that leaves the proposition still in politics, that the Governor may attempt to remove by filing charges. We insert another provision, that there shall be the consent of the Senate as well. Aside from that, those points that I have mentioned and the last paragraph, there is not any difference, but the difference is just enough to be effectual. The Committee's proposition, we believe, will be effectual to accomplish the purpose that Mr. Root says should be accomplished. The other proposition is a cipher except for the mere purpose of recognizing that there should be some form of commission government. Now, as to the last paragraph, Mr. Young has well stated from his experience that the Legislature cannot make rates properly and we say that rate-making should not be taken away from the Legislature entirely, but

should be subjected to the scrutiny and the advice and the superior information of the commissions before it acts; and, if there should be a negative commission, that the Legislature would still have power to remedy any crying evil that the State found itself presented with. I shall not attempt to add to the argument I made before and I yield to the other gentleman who will speak.

Mr. A. E. Smith — On top of page 2, you state that the removal of a commissioner shall require the approval of the Senate; does not that make the Senate the removing body?

Mr. Mandeville — The Senate is put in motion by the Governor and the two have to act together.

Mr. A. E. Smith — Well, that is entirely different from obtaining the consent of the Senate to the Governor's removal.

Mr. Mandeville — You are right about that, but the principle remains that there should not be only the Governor's action, according to the committee's view.

Mr. A. E. Smith — What was the reason given for that?

Mr. Mandeville — The reason was that the Governor of one political faith might attempt to remove a commissioner of another political faith and that by intervening another body it would make it a sort of a check upon that kind of action.

Mr. A. E. Smith — Is not that true of other commissions and boards?

Mr. Mandeville — Other commissions do not, I think, Mr. Smith, deal with subjects of such great importance as this commission does. It is not so when they perform a judicial function. For instance, judges, to be removed, must be impeached. This is a great judicial body which is entitled to the same protection. That was the view of the committee.

Mr. Quigg — Mr. Chairman, Mr. Smith has brought out the paragraph in the committee's bill, the bill reported from Judge Hale's committee, which will compel me to vote against the proposition.

"Any commissioner may be removed by the senate on the recommendation of the governor stating the grounds on which such removal is recommended."

Now that means, Mr. Chairman, that no commissioner can ever be removed unless he is caught in the act of stealing sheep on the highways. What is the duty of these commissioners? It is to walk a straight path, in the light of their duty to the public and in the light of their duty to the public service corporations, as long as the public chooses to employ these corporations in its work. They must be fair to both. They must be just to both. They must do the right thing, and the two perils to which they are subject, is that on the one hand they will play the part of

demagogues, and yield to momentary passions, or to the suggestion of agitators, thinking that that is the popular thing to do, and seek to do justice that way, or, on the other hand, that they will become the tool of the corporations and play in the hands of the corporation against the interests of the public. Now suppose the Governor accuses them, and if they do either of these things they ought to be removed,—but suppose the Governor accuses them of conduct of that sort. Now, they are to be tried and the result rests with twenty-six men. Their defense in either situation is the same, that they acted from pure motives, that they did what in their judgment was best, that they intended to do right and you cannot get 26 men who will be willing to go into their mental processes and their conscience. This scheme of removal is intended only for Supreme Court judges or that sort of people. Not for persons who are administrative officers and judges only in the sense of what is commercial and fair. On this subject I want to say that the Committee on Governor and other State Officers incorporated in their bill such a hodge podge of removal that, since they are trying to make this bill the kind of a bill that we can pass, I hope they will correct that great evil and make removal a consistent thing. If this passes, a public service commissioner is in office, no matter what he does, no matter whether he is the tool of the corporations or the demagogue that plays to win public opinion, he is in office until the end of his term. You cannot get 26 men to say that his conscience was not right, and that is the only ground on which these 26 men will consent to remove him. That provision of the bill condemns it in my mind.

Mr. Tierney — Mr. Chairman, I move as an amendment to the proposition of the Public Utilities Committee to strike out the enacting clause of this proposed amendment. When the discussion upon this amendment, this Proposed Amendment commenced, I was considerably of an agnostic. I did not know whether or not we should write into the Constitution a provision recognizing public utility commissioners as constitutional officers. After listening to the discussion the other day, after considering the manner in which the committee has treated the Proposed Amendments which were referred to them and after listening to the distinguished gentlemen who have discussed the proposition to-day I want to say that I am now a confirmed infidel. I do not believe that we are yet ready to write into the Constitution which will make permanent for twenty years a species of commission legislative and judicial, a kind of hybrid article, which is still in the experimental stage. I have yet to hear a speaker who has discussed this proposition, either for or against it, who has claimed any more than that we are still experimenting with this form of

government. Even the distinguished President of this Convention, who, with all his eloquence and training and the force of his position insisted that we should write into the Constitution this recognition of public utilities corporations really went no further than to say that we should put an anchor here so that we could not go back to the days of the Black Horse Cavalry. None of us want to go back to those days. All of us are willing to control public service corporations, but who of us ten years ago would have prophesied that we would have commissions to the members of which we should pay $15,000 a year, with all of the tremendous powers which we now give to these commissions to regulate the internal affairs of public service corporations and who is there in the nation to-day who will prophesy what will be the best form of regulating corporations ten years from now. God keep us far from the day when we will have municipal ownership; but we will not have to go very much further, Mr. Chairman and gentlemen of this committee, until we take steps along those lines. Why should we here write into the Constitution a recognition of a form of government which is at the best only an experiment? My view of this is that as far as the regulation of public service corporations is concerned, we are still in a kind of twilight sleep, and we would better awake and leave it to the Legislature and to the people to say what particular form of regulation and what particular form of judicial and regulative government they shall use to regulate these corporations in the future.

Mr. J. G. Saxe — I don't want to take very much time in this debate, but I do want to express one thought. I don't care particularly which of the two basic amendments prevails, that of the committee or that of General Wickersham, with one single exception, and that is I think we ought to decide here how many commissioners we are going to have and make that a part of the basic laws for the next twenty years. Now this afternoon the Thompson Committee was given a certificate of character, and yet how many members of this body know that Senator Thompson at the last session, this year, introduced a bill to reduce the commissions from two commissions to one? And if General Wickersham's amendment prevails in its present form and we have a provision in the Constitution that there shall be one commission or two commissions, you are going to see the same old rippers that have been going on for the last 15 years; and in 1916 we will have one commission, and in 1918 we will have two commissions and Mr. Quigg need not worry about how the removal is going to be effected because it is going to be accomplished annually, alternately, by ripper bills.

Mr. Wickersham — Mr. Chairman, may I ask the gentleman what basis have we in this Convention now on which to form an

opinion as to whether or not there should be one commission or more?

Mr. J. G. Saxe — Mr. Chairman, the Committee has held a large number of hearings at which it has heard a great many hundred people and that Committee has virtually certified, that two commissions will be indispensable and will be for the next twenty years.

Mr. Wickersham — Then the only data we have here is the fact that the Public Utilities Committee recommends it on the statements made before it, as we sat in it?

Mr. J. G. Saxe — The Public Utilities Committee after hearings by the direction of the President of this Convention which appointed it and after exhaustive hearings has reached that determination.

Mr. A. E. Smith — Supposing that upon a report of a legislative committee, a majority of this House and a majority in the Senate voted for one commission, and the Governor of the State signed the bill, what harm would come to the State?

Mr. J. G. Saxe — No harm whatever, if you decide on one commission, but if in two years afterwards they will use that same process so as to get rid of that one commission with a particular personnel and get back two commissions with a different personnel, then you have the other situation, that has come up in the last fifteen years.

Mr. Wickersham — Mr. Chairman, will the gentleman yield? Would it be possible to remove that one commission except on charges?

Mr. J. G. Saxe — Certainly.

Mr. Wickersham — Certainly not.

Mr. J. G. Saxe — They could remove it by creating two commissions.

Mr. Wickersham — No, sir. I submit no such construction is possible.

Mr. J. G. Saxe — Not only possible, but no possible answer to it.

Mr. Wickersham — No possible basis for it.

Mr. Deyo — I fully agree with the statements made by Delegate Saxe with reference to the necessity of naming the number of commissions in the Constitution if you are going to constitutionalize that body. Any other course would simply be an invitation to the Legislature to go ahead and do its worst with reference to the commission. Now as to the suggestion as to removal: These commissions have to do with great problems. They are the most important body with respect to the functions which they perform of any body in the State excepting the courts. They

have to do with vast problems and vast amounts of property. If we are to constitutionalize these commissions they should be stabilized as well. The gentleman argues that they should be removed at the instance of the Governor upon charges. If that be done, we are simply inviting a procedure such as was adopted by the Legislature of this State last winter, when they went out simply to "get" their men. Under the Constitution of the State as it now stands a commissioned officer in the militia cannot be removed except by the Senate on the recommendation of the Governor — precisely the language that is embodied in this provision.

I don't speak for the Committee, I do speak for myself, having in the many hearings and the number of witnesses we have heard with respect to this proposition. There was no difference of opinion upon one proposition, and that was that whatever may happen within the next twenty years the work of these commissions cannot be done by one, there must be two. The bill is so drawn that the jurisdiction of the commission, of the different commissions may be changed, from time to time, both territorially and otherwise. If the Legislature shall see fit to put the telephone companies, the gas companies, and the electric light companies and other companies under the jurisdiction of one commission it might do so; if it saw fit to put other public utilities under the jurisdiction of the other commission, it might do that; or to take out from the jurisdiction of the commission the work of the subways in New York city, it could do that. But whatever may happen, the unanimous testimony before the Committee was that we should need in the next twenty years the work of two commissions. We might not have to have so large a number of employees, but two would be necessary.

Now, gentlemen of the Committee, I don't feel that our honored leader needs to apologize for disagreeing with the report of this Committee. It is a liberty which I have taken and the majority of this Convention have taken with respect to the work of the Committee of which he is the honored chairman and we did it without apologies. I am not speaking for the Committee, I am speaking for myself, and rather than see adopted the amendment proposed by General Wickersham I would prefer to see the amendment adopted which was proposed by Mr. Tierney to strike out the enacting clause. You simply emasculate the bill; you are simply inviting, if you strike out that clause, the Legislature to proceed with relation to rate-making. It is simply an invitation to them to proceed in the next session as it has done heretofore. Are you aware of the fact that since these commissions were established by law there have been over 330 bills introduced in the

Legislature fixing rates or standards of equipment? That ought not to be done without investigation and examination by the body which the Legislature has delegated to perform that important labor. That is not all. There is not a corporation wrecker in this State, there is not a man who has made his fortune by exploiting the stocks and bonds of public service corporations, who doesn't want to see this amendment killed. You must understand, gentlemen, that rate-fixing is not the only function of these public service commissions. There have been in times past exploitation of corporations by the issuance of stocks and bonds without any security back of them except a right of way and two streaks of rust. These securities have been sold upon the market and vast fortunes have been piled up by the wrecking of corporations through the issuance of stocks and bonds. That cannot be done so long as the public service commissions stand between the corporations or the exploiters of corporations and the people of the State. (Interruption by gavel.) One moment more, Mr. Chairman. Just a single sentence more. If that last sentence is stricken out regarding the fixing of rates it is an invitation for the next Legislature, the demagogue of the next Legislature, to say that the Constitutional Convention did not propose to place any limit upon the power or the authority of the Legislature to fix rates, and therefore we will proceed to fix them.

Mr. Hale — Mr. Chairman, there is not any question in the mind of any member of the Committee, so far as I know, and we studied this matter about three months, that if we are going to do anything in recognizing the public service commissions as constitutional bodies we should recognize two. The Committee recognizes that we are going to need the two as many years in the future as we can see from the present. The two public service commissions that we have now are a condensation in number of the old board of railroad commissioners, the old commission of gas and electricity, and the rapid transit commission and a number of officers not boards, who had duties relating to service rendered by public service corporations in one capacity or another. So that when you got two commissions you received a reduction of the number of public service commissions in the State, called under different names, of course, and their functions were condensed, and they were made fewer in number, they were made more united and brought in closer relation with the administration of the laws. They were brought just as near a unit as you will ever have in the State of New York as long as the city of New York has its problems, and the State of New York outside has its problems. The time will never come, gentlemen — and I would like to have General Wickersham hear what I say — the time will never come

when the man who lives and has his being in the city of New York and goes and comes to and from his daily affairs is going to want a man from up-State to regulate his affairs. I don't care whether that man is to regulate the matter of service in the city of New York, or the matter of rates there, or the matter of the issue of capital stock and bonds and the same thing is just as true up-State. Up-State now, if a man in Chautauqua county has a complaint to make against a public service corporation, no matter how far it is from Albany, a commissioner goes and hears the complaint, and the law is brought into the neighborhood. It is not altogether in the administration of law the question whether the right and best thing is done, but whether an attempt is made to do it. It has been said that every lawsuit tried in the courts of the State since the beginning of time might have been decided the other way, and yet justice might have prevailed. Of course, that is a grossly exaggerated statement. But a great part of the thing that the court does, and a great part of the thing that a commission does, is to have the thing heard and to hear both sides, to sit in judgment upon it and to do the best that can be done from human standards and by human agencies. And so it is in the country. The man who has a small complaint against a small corporation is just as much interested in having it heard and in having it heard right, and a decision follow that ought to follow as the man in the city of New York who has a complaint a thousand times as large. And you are never going to get — it is the most demoralizing thing that can happen, when a country judge goes to New York city and learns how to do things as they do them. We have a good many country judges who are spoiled by going to the city of New York. Why? Because he gets the Metropolitan habit. He gets the habit of haste. He gets the habit of doing small things in a big way. It destroys our administration of justice. I know in our judicial district of a number of judges who moved out of our district and neglected the work they were elected to perform and went down and performed your work at extra compensation, and it spoiled them for our purposes.

Mr. Wickersham — Let me say that some of your best country judges who came down to us have been made some of the best judges in the State.

Mr. Hale — Of course. We raise better men for judges than you do.

Mr. Wickersham — And when some of them went back to the Court of Appeals they made better judges than you had up-State.

Mr. Hale — Yes, and we have got more of them. But this has got to be said, General, that the man who gets the habit of doing

things in the country the way you have got to do them in the city, does not do justice, and it is justice we want up-State as well as in the city of New York. Now, you might just as well say nothing about it; you might just as well adopt Mr. Tierney's amendment, to strike out the enacting clause, as to provide in the Constitution now for one or two commissions, according to the will of the Legislature. I would not say that if I did not believe it. I would not say that if I believed the Legislature to be perfectly fair and square and candid every time. If the Legislature without regard to whether the Republicans were in the majority, in the temporary majority, or whether the Democrats were in the temporary majority and obliged to make hay while the sun shone — I would not say that, if I thought they would address themselves to the merits. But they won't. You cannot point to a single institution that has been ripped up or down, destroyed to build over again, that has not suffered from the fact that it was the loaves and fishes and not the interests and satisfaction of the people of the State of New York that actuated the Legislature. Now, I have not any feeling about this matter except that I would like to see the Constitutional Convention do a wise thing while it is about it. I think it would be better to recognize the Public Service Commissions, because I think it would be better for the Legislature; and I don't want to forget that the Legislature created these bodies. It not only created these bodies in this State, but it created them in forty-six out of forty-eight States of the Union — forty-five other States than this. Congress created the Interstate Commerce Commission, and we must not forget that it is to the Legislature that the credit, if credit is due, should go, for the original establishment. And I would like to see a thing that has been created in New York, and on the whole has worked well,— I would like to see it established in the Constitution. But I think we might just as well adopt the resolution of Mr. Tierney unless you are willing to say what the Legislature did in 1907 on the whole has worked out justly and satisfactorily. We have gotten away from some of the things — and you have forgotten about them. The question of rates, the question of service, is not the main thing that has been answered by the Public Service Commission. It is the question of the issue of stocks and bonds that is the large question — the prevention of the tremendous and outrageous fleecing of the public that had just preceded the establishment of these commissions in 1907. Don't forget, gentlemen, just as the President said, about the objectionable, the scandalous attempts to influence legislation by lobbyists. It was the thing we have forgotten about. And we have forgotten the principal function of these commissioners, which is mainly to see to it that the issue of stocks and bonds of

public service corporations are at least honest. I do not think it would be wise, Mr. Chairman, to prolong this discussion. Every delegate here knows whether or not he desires to vote for one or the other of these propositions. The committee, which certainly gave deliberate and careful attention to the problem, believes that its proposition is right and we submit it confidently for the vote to be taken.

The Chairman — The question is upon the amendment or substitute offered by Mr. Wickersham of New York.

Mr. Foley — Before the question on the motion is put, is it in order to offer an amendment?

The Chairman — An amendment to the amendment offered by General Wickersham?

Mr. Foley — I desire to offer an amendment to his substitute.

The Chairman — Send it to the desk.

Mr. J. G. Saxe — I would suggest that Senator Foley withhold his proposed amendment until we see whether Mr. Wickersham's amendment is adopted.

The Chairman — I should think that was the better parliamentary procedure to pursue.

Mr. Foley — I would prefer not to do that. I would prefer to follow the course that I suggest and then it will be squarely before the committee.

The Chairman — Send the amendment to the desk.

Mr. Foley — Mr. Chairman, I have not a copy before me, but I desire to strike out the words "one or more", so as to make it "two" commissions, and to establish two commissions in the Constitution. If the Secretary will draft a proper amendment, I will consider it as submitted. I desire to submit it because then I think the question will be fairly and squarely before the Convention as to whether there shall be one or two commissions.

The Chairman — Will the gentleman call the attention of the Chair to the line and page in which he desires to strike out these words?

Mr. Foley — I have not got the substitute before me.

The Chairman — You will have to formulate the amendment in such a way that it can be read.

Mr. Wickersham — Mr. Chairman, the gentleman's suggestion is to offer an amendment to my amendment.

Mr. Foley — On the first line of Mr. Wickersham's substitute, I desire to strike out the words "one or more" and to insert in place thereof the word "two" so that the line shall read: "There shall be two public service commissions."

Mr. Brackett — I want to suggest, simply as a matter of submission of the question, that it seems to me in this case, reversing

perhaps the usual practice, the Tierney resolution should be first presented, because if there is a preponderance of sentiment in favor of absolutely striking out the enacting clause, of course all the others will go.

Mr. Wickersham — Mr. Chairman, I raise a point of order. Under the rule the amendments must be voted on in the order of their presentation.

The Chairman — The Chair was about to follow that procedure. The question before the House is the amendment offered by Mr. Wickersham.

Mr. Cobb — Mr. Chairman, I offer the following amendment. May I say a single word on it, or has the time expired?

The Chairman — The time is up but the Chair will listen to a brief statement.

Mr. Cobb — This is very similar to the amendment offered by General Wickersham, except that it provides for two commissions which may be reduced to one; and, if reduced to one, the Governor may select from the two commissions those who are to continue in the single commission. Under the amendment proposed by General Wickersham, those commissioners being constitutional officers, if they were removed or the number of commissions reduced, they would still continue to draw their salaries. I believe that there is considerable hope that the number of commissions may be reduced to one, not only because completion of the subways within the next five years will reduce the business but because fully eighty per cent of the business before the commissions, or fully eighty per cent of the capital of the public utilities coming under the jurisdiction of the public service commissions, is the capital of carriers engaged in interstate commerce, which Congress may at any time take over and which would very greatly reduce the volume of business before the commission.

The Chairman — The Chair is informed by the Clerk that the amendment introduced by Mr. Buxbaum is an amendment of the amendment proposed by Mr. Wickersham. Therefore, the first question before the House is upon the amendment offered by Mr. Buxbaum, which the Clerk will read.

Mr. Ostrander — If it is in order, I would like to offer an amendment to General Wickersham's amendment.

The Chairman — It is out of order at the moment. The Chair will entertain it later.

Mr. Wickersham — A point of order. Is not the question upon the amendment which I proposed?

The Chairman — I understand the question is upon the amendment to your amendment. The clerk will read the amendment offered by Mr. Buxbaum.

Mr. Vanderlyn — Mr. Chairman, I do not remember the amendment offered by General Wickersham. May we have it read again?

The Chairman — The Clerk will read first the amendment offered by Mr. Wickersham. The committee will come to order.

The Secretary — On page 1, strike out all after line 3, and insert as a substitute: "There shall be one or more public service commissions. Commissioners shall be appointed by the governor by and with the advice and consent of the senate. The governor may remove any commissioner for cause after service upon him of a written statement of the alleged cause and an opportunity to be heard thereon. Until the Legislature shall otherwise provide the existing commissioners are continued with the jurisdictions and powers at present vested in them."

The Chairman — Now the Clerk will read the amendment offered to that amendment by Mr. Buxbaum.

The Secretary — Strike out after the words "service upon" in line 4, the word "him" and substitute "such commissioner."

The Chairman — All those in favor of the amendment will signify by saying Aye. Contrary, No; lost. The question now is upon the amendment offered by Mr. Wickersham.

Mr. Foley — My amendment comes first.

The Chairman — Has Mr. Foley's amendment been sent to the desk?

The Secretary — Yes.

The Chairman — The Clerk will read the amendment by Mr. Foley.

The Secretary — In line 1, strike out the words "one or more" and insert in place thereof the word "two."

Mr. Foley — I ask for a rising vote.

The Chairman — A division is called for. All those in favor of the amendment offered by Mr. Foley will rise. The delegates will be seated. Those opposed, will rise. The delegates will be seated. The Clerk will announce the result.

The Secretary — Ayes, 83; Noes, 39.

The Chairman — The amendment is carried. The question now is upon the amendment offered by General Wickersham as amended.

Mr. Cobb — May my amendment be read? It is offered as a substitute.

The Chairman — Is that a substitute for the Wickersham amendment?

Mr. Cobb — Yes.

The Chairman — The Clerk will read the substitute offered by Mr. Cobb.

The Secretary — There shall be a department of public utilities consisting of two commissioners. The commissioners shall be appointed by the Governor by and with the advice and consent of the Senate for a term of five years. A commissioner may be removed by the Governor for cause after he shall have been served with a statement of the cause alleged and shall have had an opportunity to be heard. The Legislature may at any time reduce the number of commissions to one, whereupon the Governor shall designate from all the commissioners those who are to continue in office. Until the Legislature shall otherwise provide the existing commissioners are continued with their present jurisdictions and powers.

The Chairman — All those in favor of the amendment offered by Mr. Cobb will signify it by saying Aye. Contrary, No. The amendment is lost. The Clerk will now read the amendment offered by Judge Ostrander to the amendment of Mr. Wickersham.

The Secretary — By Mr. Ostrander: Strike out all after the word "remove."

Mr. J. G. Saxe — Mr. Chairman, will the Clerk read what is left?

The Chairman — Will Judge Ostrander call the attention of the Chair to the page and line?

Mr. Ostrander — I am, unfortunately, working in the dark, because I have neither page nor line; but what I am attempting to do is, to strike out all that part of the amendment which relates to removing a man by the Governor after he has been heard. If I am in order, I would like to say a word or two about it.

The Chairman — No debate at the present time. The question is upon the adoption of the amendment offered by Judge Ostrander. All those in favor of it will signify by saying Aye, contrary No. The amendment is lost. The question now is upon the amendment offered by Mr. Wickersham, as amended.

Mr. Blauvelt — May that be read in its amended form?

The Chairman — The Clerk will read the amendment offered by Mr. Wickersham in its amended form.

The Secretary — There shall be two public service commissions. Commissioners shall be appointed by the Governor by and with the advice and consent of the Senate. The Governor may remove any commissioner for cause after service upon him of a written statement of the alleged cause and an opportunity to be heard thereon. Until the Legislature shall otherwise provide the existing commissioners are continued with the jurisdictions and powers at present vested in them.

The Chairman — The question before the Committee is upon the adoption of that amendment. A division is called for. All

those in favor of the amendment as read will rise. All those opposed will rise. The delegates will be seated and the Clerk will announce the result.

The Secretary — Ayes, 81; noes, 50.

The Chairman — The amendment is carried.

Mr. Wickersham — I now move that the section as amended be adopted.

Mr. Wagner — Mr. Tierney has an amendment.

Mr. Wickersham — Mr. Chairman, the amendment superseded the whole article. All amendments to it were voted upon. I understand that carries everything and I now move that the section as amended be adopted.

The Chairman — The Chair holds in accordance with the statement made by General Wickersham.

Mr. Wagner — There is still an amendment to strike out the enacting clause.

The Chairman — Is that motion renewed by Mr. Tierney?

Mr. Tierney — It is. I move to strike out the enacting clause.

The Chairman — All those in favor of that motion will signify by saying Aye, contrary No. It is lost. The question is upon the motion made by Mr. Wickersham. All those in favor of that motion will signify by saying Aye, contrary No. It is carried.

Mr. Wickersham — Mr. Chairman, the next number on Special Orders is No. 62.

The Chairman — The Chair recognizes Mr. Stimson of New York on General Order No. 62.

The Chairman — The Committee will come to order. Mr. Stimson has the floor.

Mr. Stimson — Mr. Chairman, I ask to have the amendment proposed by the Committee on State Finance, General Order No. 62, read by the clerk.

The Chairman — The clerk will read the amendment now before the Committee.

The Secretary — Proposed Constitutional Amendment. To amend section 20 of article III of the Constitution, in relation to the appropriation of public moneys for construction purposes.

Mr. Clinton — Mr. Chairman, we cannot hear a word.

The Chairman — There will be order in the room. The sergeant-at-arms will clear the floor of all people not entitled to seats in the Convention.

The Clerk will proceed to read the amendment.

The Secretary — Section 20 of article III of the Constitution is hereby amended to read as follows: Section 20. The assent of two-thirds of the members elected to each branch of the Legislature shall be requisite to every bill appropriating public moneys or property for local or private purposes. No public moneys or

property shall be appropriated for the construction or improvement of any building, bridge, highway, dike, canal, feeder, waterway or other work until plans and estimates of the cost of such work shall have been filed with the Secretary of State by the Superintendent of Public Works, together with a certificate by him as to whether or not in his judgment the general interests of the State then require that such improvement be made at State expense.

The Chairman — The Chair recognizes Mr. Stimson and the Committee will come to order.

Mr. Stimson — Mr. Chairman, this amendment is reported by the Committee on State Finances and has reference to that class of appropriations which has come to be known, rather inaccurately, as appropriations for local improvements. The original provision of section 20 was apparently aimed to cover appropriations made for the same class of appropriations at which the amendment now offered by the Committee is aimed, but it adopted an erroneous method of reaching an evil and under the construction which has been put upon it by the courts it has been quite ineffective to reach that evil. The Legislature has always had, and if it is to perform its full duty in the future it must always retain, the right to use public money for the purpose of making improvements in the different localities of the State, which are of such character in respect to the general benefits that may be anticipated from the improvement as to justify the spending of State moneys upon them. Any limitation upon the theory under which special appropriations are based would prevent the making of such absolutely necessary improvements — for instance, in our National affairs, as the improvements of our great harbors. Those are all made on the theory that the benefit derived is national, although the money is spent in a given locality. And so in the case of these State improvements. The underlying theory which justifies the use of State money in a locality is that the whole State is going to derive a benefit from it. And, consequently, in this original provision of the Constitution, in section 20, the courts very promptly held that these bills were not local or private bills, and that money spent for this purpose was not for a local or private purpose, and therefore the restrictions provided in section 20 did not apply and the whole section became inoperative to check very grave abuses which have grown up. The abuse comes from the fact that although the theory may be correct, the application is wrong. The abuses come up when State money is spent for purposes which do not benefit the State as a whole. The purpose of this amendment is to correct the abuse, not by destroying the discretion of the Legislature, but guiding it and safeguarding it, and seeing that before the Legislature acts it is surrounded by the safeguards which a business man in the transaction of his regular

business would normally and ordinarily use. Therefore, the Committee has recommended the provision that all appropriations made for purposes of construction shall be subject to two conditions, both of them aimed to place before the Legislature full information in respect to the proposed action and then after having given that guidance to the Legislature, to leave open the legislative discretion. This body had before it in the argument some days ago in relation to the budget a number of the various methods in which money is spent for these improvements. It is unnecessary to go over them again, because I think you are all familiar with them. I have in my hands here the seventeen different bills which were passed by the last Legislature in respect to this class of improvements. They can be roughly subdivided as follows: Some nine of them were for bridges in different parts of the State; two of them were for improvements of creeks; two of them were for the construction of schoolhouses; and one of them for a dyke or abutment along a feeder of the canal. Now, the purpose of this amendment is to provide that before the Legislature can act in regard to such a claim, it shall have before it first a plan and estimate of how much the matter is going to cost. Your committee has found that there has been great abuse in respect to that. Works are undertaken and appropriation is made and after that appropriation has been used up and the work begun, it is found that the actual cost will be three or four times as much as the appropriation. And the argument is then made that it is a pity to waste that money, the work has been begun and the additional appropriation is procured from a subsequent Legislature. Your committee has been informed that the departments of the government have been bad sinners in that respect. A second precaution is that before such an appropriation can be made, there must be filed with the Legislature a certificate by the Superintendent of Public Works as to whether or not in his judgment the general interests of the State require that such improvement be made at State expense. Now, the suggestion as to this remedy reached your committee from several different sources. We found that, for example, some ten or fifteen years ago, Governor Higgins at the time when he was Chairman of the Finance Committee of the Senate adopted precisely this regulation as a regulation of his committee and refused to report any of these appropriations until he had such a certificate before him from the Superintendent of Public Works. I have learned that a similar suggestion was made even earlier, within the memory of one of the delegates here, some twenty-four years ago, and I will leave it to that delegate to tell of that experience, if he will as he has told it to the committee. The suggestion was also made to us by the present

Chairman of the Finance Committee, Senator Sage, through his experience. The Clerk of his committee, under his suggestion and at our request prepared a suggestion to meet this evil, and it corresponded almost exactly with what the committee has here presented in its amendment. And, finally, as another analogy, this suggestion follows almost exactly the precedent which is employed by the National Legislature in dealing with this kind of improvements in the National Government. In 1902, Congress in its River and Harbor bill then passed a statute which provided for a board of engineers who were to examine and report upon just this class of improvements when appropriations were desired for them, and whose advice was to guide Congress in making such an appropriation. And I have here the language which they used and it covers precisely the elements which your committee has recommended should be introduced into our Constitution for the guidance of our Legislature. Having created this board, the statute provided that in the consideration of such works and projects the board shall have in view the public necessity for the work and the propriety of its construction, continuance or maintenance at the expense of the United States. And ever since that statute has been passed Congress has been acting upon certificates of just the kind that we propose here from the Department of Public Works.

I have in my hand a series of such certificates and they read somewhat as follows: The engineer who makes the examination reports at the end of his report, for instance, in regard to the Great Chazy river of this State, "Under all the circumstances, the Great Chazy river in my opinion is not worthy of further improvement at National expense at this time," or, in regard to the Salmon river, he reports at the end of his report, "Under all the circumstances the Salmon river in my opinion is not worthy of further improvement at National expense at this time, or, at least, until the Canadian government has adopted provisions for its improvement of its section of the river." In other words, this amendment seeks to lay before the Legislature as a basis for its action the same kind of information, and to prevent its action until it has had it before it. It seeks in that way, to secure that deliberate and far-sighted action, or information and knowledge, which should be before any Legislature before acting upon these improvements, and your committee believes that in that way a very much surer and more accurate and safer check can be put upon those abuses than any other one that has been suggested. Your committee has consulted with the different departments of State and we are confirmed in our views after that consultation. The present Superintendent of Public Works reported, or told me, it

would be quite feasible from the standpoint of his office to prepare and file such certificates and reports. I find that out of these cases, last year, out of fourteen construction statutes, thirteen of them, thirteen out of fourteen were appropriations for work to be done under the Superintendent of Public Works. Therefore, even under the present system and without any consolidation of departments the Superintendent of Public Works is the normal and regular officer to prepare such a certificate. Of course, should the proposed consolidation reported by the Committee on Governor and Other State Officers be adopted by this Convention that department would cover all construction work of the State. As I say, even now, under the present system, it covered thirteen out of fourteen of the bills last year.

Mr. Clinton — Mr. Chairman, the question has arisen as to the effect of this amendment in the case of canals and canal feeders, where the emergency arises as by reason of a break and an appropriation, or action of the Legislature is immediately necessary as where the appropriation applicable to repairs has been completely used up, or not sufficient left to make the emergency repairs. I would like to ask the question, whether the Chairman of the committee regards, or whether the committee regards, this amendment as sufficient to cover such a case.

Mr. Stimson — I would be very glad to answer that question. That matter was fully discussed before the committee and I wish to put on the record its views. We discussed originally having the language read as follows: "Or for the construction, repair or improvement of any building, bridge," and so forth, and the word "repair" was struck out in order that it should not cover such a case as Mr. Clinton has suggested. It is intended to cover only new construction, or such a modification in the nature of an improvement as will amount to a construction.

Mr. Blauvelt — How would this amendment affect the construction and improvement of highways out of the highway improvement fund?

Mr. Stimson — Very glad to answer that question to the best of my ability. That was one which I had the most doubt about, Senator. I consulted with the highway commissioner and this was the result of that consultation. There are, of course, two classes of highways; the highways constructed in accordance with the general plan and out of the bond issues for that purpose; and, secondly, highways constructed out of current appropriations, which I might call special highways. Now, in regard to the latter class, there is no difference of opinion whatever. Both the committee and the commissioner of highways felt that the latter class should certainly be covered by this amendment. As the

secretary of the commission, I think Mr. Morris, stated, the department would cordially endorse the application of the amendment to such highways. In regard to highways constructed out of bond issues and under the regular plan, there was some doubt. The highway commissioner was afraid that it would interfere to a certain extent with their winter work, and that matter was given very careful consideration by me and by the other members of the committee. The method of doing business at present in regard to those highways is that the working force begins its work about the first of April, and works, as I am informed, until frost comes in November, and then a large portion of that force is employed indoors in the winter, making plans for the coming season. In order to have the plans for the coming summer ready, in time for the action by the Legislature in the general appropriation bill, which would cover the appropriations for the summer, it would be necessary for the highway commission to get those plans finished, perhaps a month or two months earlier than they now do it, and they were considerably worried over that necessity. After consideration, however, I did not feel that I would recommend any change on that account. It seemed to me to be one of those things which an active and energetic department could adapt itself to, if necessary, and that a change should not be made in the amendment for that reason. If necessary, they might make their plans several months earlier. It would not really kill them to get enough of them ready a year before to cover that extra two months. They merely will have to throw their work forward that amount of time, and in order to bring a work to which it ought to apply within it, we did not feel like making an exception to that, but I lay before the Convention the fact in regard to it, for their information.

Mr. Blauvelt — This amendment, so far as the construction of highways out of the highway improvement fund is concerned, contemplates the preparing by the superintendent of public works, if he is the head of this department, or the Commissioner of Highways, some time during the period the Legislature is in session and before it makes its appropriation out of the highway improvement fund, of all the new work for the ensuing year, of all the plans, estimates and specifications for the entire year, and they must be filed with the Secretary of State and certified by the head of that department, be he the Superintendent of Public Works or the Commissioner of Highways. In other words, as I understand the amendment, and I ask, if I am correct, all of the year's work must be anticipated, plans, estimates and specifications prepared and filed, before the Legislature may make its appropriations against the authorized funded debt permitted by the Constitutional amendment or the referendum; is that right?

Mr. Stimson — I think that would follow.

Mr. Root — Does either Mr. Stimson or Mr. Blauvelt mean to include specifications in that? Plans and estimates would not, ordinarily, include specifications. Plans and estimates of costs would rather seem to exclude the idea of specifications, and would not include working plans, ordinarily.

Mr. Stimson — Mr. Chairman, I might say in regard to that, I think the President of the Convention is correct. The plan required is a plan sufficient upon which to form an estimate and not a plan sufficient upon which to perform the work, but it should be sufficiently detailed to make that estimate of value, and that is the extent to which it is required. I think the plan would be judged by the purpose for which the amendment creates it, namely, for a basis upon which the Legislature may make the estimate, or can make the appropriation.

Mr. Blauvelt — I think in the case of highway contracts for improvement, for construction work, that specifications are necessary in order to determine the estimates, because in the case of peculiar kinds of contracts, perhaps in the case of highways where unit prices are put in the contracts, the specifications are a part of the contract.

Mr. Stimson — If I am not mistaken, Senator, the commissioner's representative told me that there were plans made which did not include this, which were very different and of a very much less formal character than the full specifications.

Mr. Barrett — Is it your understanding of the word "improvement"— continuing Senator Blauvelt's thought, concerning highways, the word "improvement" will not include repairs, so that the appropriation by the Legislature for highways already constructed will not come within this provision?

Mr. Stimson — My answer to that would be that the amendment would not cover such repairs as would be characterized by maintenance. It would include the changing of a dirt road to a macadamized road. That is not a repair, it is an improvement.

Mr. A. E. Smith — For the purpose of letting us understand how the appropriation for the improvement of highways is made now. It is made in a lump sum, the estimate is made in the Engineer's office, in the Department of Highways, and the only difference that is contemplated between this and the present system is, that the Commissioner of Highways does not take the trouble now to bring over his estimate; he simply says, I should have during the next year eleven million dollars, and he gets it.

Mr. Stimson — That is the present practice, and I think it illustrates the importance of having this amendment applied to that class of appropriation.

Mr. A. E. Smith — Unquestionably so.

Mr. J. S. Phillips — Does this prevent the Governor from inserting in his budget a request, say, for an appropriation for construction of new highways?

Mr. Stimson — That was discussed before the Committee, and it was the Committee's view that this should apply to the Governor as well as to anyone else. A part of the abuses which have been reported to the Committee as the most flagrant, were abuses in the departmental establishment. Departments have asked for appropriations without adequate estimates or plans of what the proposed improvement was going to cost and have embarked the government upon such enterprises only to find out that it goes to a great deal more than the original appropriation, and it seems to us that particularly the first of these precautions, that the preliminary estimates should be made and filed should certainly apply to the Governor's budget.

Mr. J. S. Phillips —Another question, Mr. Stimson. Would it apply to additions to State institutions, buildings, improvements?

Mr. Stimson — If it is not a repair.

Mr. J. S. Phillips — I mean improvement; additions.

Mr. Stimson — That is the view of the Committee, sir.

Mr. J. S. Phillips — Is it your view that if this proposal were adopted that all appropriations could be made in a lump sum, for improvement of highways, as suggested by Mr. Smith, for instance? As I understand it, the Highway Commissioner, or the Commissioner of Highways asks for an appropriation which he thinks is sufficient to improve the highways during the coming year. Now, will this prevent him from asking a lump sum?

Mr. Stimson — I think not.

Mr. J. S. Phillips — In other words, would he have to specify the highways to be improved for which the appropriation is to be asked?

Mr. Stimson — He would submit plans and specifications for the amount he asked.

Mr. J. S. Phillips — Then that would have to include every highway that he proposed to improve?

Mr. Stimson — During the coming summer; yes.

Mr. F. L. Young — Mr. Chairman, as I read this, it seems to be advisory to the Legislature. I do not read this as conclusive upon the Legislature at all.

Mr. Stimson — I think you read it correctly, sir.

Mr. F. L. Young — They might make appropriation in excess of the estimate asked for, or lower than the estimate asked for?

Mr. Stimson — They might. It is aimed to place before the

Legislature the facts, in the light of which it must act, one way or the other. The responsibility is upon the Legislature.

Mr. Barrett — Mr. Stimson, in your inquiry from the commissioner of highways, did you find any distinction between a repair job and a resurfacing job, whether one or the other would be included as an improvement or construction?

Mr. Stimson — I do not recall that that precise question was covered, Mr. Barrett.

Mr. Barrett — It was intended to be covered by the provision in this section that no repair work would be covered by the words "construction and improvement." Before that construction the plans and estimate of cost submitted must be filed with the department of public works.

Mr. Stimson — I might answer in this way: It would be my opinion that in the matter of resurfacing of a highway, where it is not the ordinary method of business men to have plans or specifications filed, that would be treated as maintenance or repair, and would not be covered by this amendment. The amendment would only cover such cases where in ordinary, good business it is the custom to have a plan made showing the actual work of construction and the estimate for it.

Mr. Barrett — One more question, if I may: plans, according to your construction would include such plans and facts as would be necessary to have to base the cost upon?

Mr. Stimson — Precisely.

Mr. Marshall — Mr. Stimson, did I understand you correctly as saying that this was to be merely directory and not mandatory, and that an appropriation would be a valid appropriation which would not comply with this provision?

Mr. Stimson — No, you did not hear me say that, at all, sir. I intended to say, Mr. Marshall, that this required certain certificates to be filed, and no appropriation could be made until such certificates are filed, but the language is that the certificate is to state simply whether or not in his judgment the general interest of the State then required that such improvement be made, and assuming that, that the superintendent of public works filed a certificate and that the certificate said that it would not be in his judgment for the interest of the State that such improvements should be made, the Legislature might, after that certificate was filed, in the exercise of its discretion, take a different view and go ahead and make the appropriation, but it must have that first.

Mr. Marshall — A certificate, either in the affirmative or in the negative, must precede a valid appropriation?

Mr. Stimson — Precisely.

Mr. C. A. Webber — Mr. Stimson, I would like to know whether this contemplates that all plans, that all work of a public nature, would be prepared by the superintendent of public works, and if that might prevent plans being prepared on the outside by anyone. Suppose we wanted to replace this monstrosity of a capitol here, could we invite outside plans? To do so, I think, requires appropriation. You could not, under this, as I read it, obtain such appropriation.

Mr. Stimson — My answer to that, Senator, would be that the amendment requires that the plan be either that of the superintendent of public works or approved by him. Necessarily, he must make out his certificate.

Mr. C. A. Webber — How would he obtain plans outside without appropriation?

Mr. Stimson — I think that could be safely left to anybody who desired an appropriation to see the plans for that if they come from the outside were laid before the Superintendent of Public Works.

Mr. C. A. Webber — It has been said that this would prevent an appropriation for a plan. Perhaps a statement to that effect by the Committee might be valuable.

Mr. Stimson — I think it would clearly follow that the Superintendent of Public Works would probably not be left without sufficient contingent expense to prepare plans under the circumstances which this amendment presumes.

Mr. A. E. Smith — Mr. Chairman, just one other question that has occurred to my mind while the question of highways was under discussion. I am the least bit afraid that this will have to be amended. I think we have overlooked entirely a case in which it would not be feasible to have plans filed by the Superintendent of Public Works, and that is the contribution by the State of its share for the elimination of grade crossings. At present it is done after this manner. The lump sum appropriation is made and lays in the Comptroller's office to the credit of the Public Service Commission in both departments. The railroad company draws the plan, lets the contract, subject to the approval of the Public Service Commission, and the county pays its share of one-third, the Public Service Commission draws upon its drawing account in the office of the Comptroller for the State's third, and the railroad pays the other third. That money is usually appropriated before the grade crossings are ordered eliminated, because the Railroad Law so requires, the Public Service act requires that before the Public Service Commission can order the elimination of a grade crossing there must have been appropriated by the Legislature and to the credit of the

commission sufficient to meet the State's share of one-third of the cost of the elimination. I am not prepared to say how it shall be worked, but I do think that should be taken out of there.

Mr. Stimson — May I say what I can in reference to that? That matter was also discussed, Mr. Smith. The committee saw no reason why the plans — although I understand that in such cases as you have suggested they usually come from the railroad company — why those plans should not be subject to the approval of the Superintendent of Public Works, and estimates based upon them had, and so far as the law being different from this Constitutional provision is concerned, it could be very readily amended so as to conform with it. We saw no reason why an exception should be made of that.

Mr. A. E. Smith — Well, what I have in mind is the duplication of effort and the duplication of labor. The plans must, under the Public Service Law, be submitted to the Public Service Commission for approval. Now, with regard to this particular kind of work, it might be well to have that commission give the Legislature the plans rather than this duplication as between the Superintendent of Public Works, the Legislature and the Public Service Commission.

Mr. Stimson — I can conceive that under such circumstances the approval of the Superintendent of Public Works might come to be a matter of almost routine, and be based largely upon the previous action of the Public Service Commission. But I hardly think that under the circumstances that would justify an amendment to the general principle.

Mr. A. E. Smith — I am afraid the Committee has not taken into consideration that there is a very great difference between an appropriation for a building and the repair of a canal feeder or of a dyke or the construction or repair of a road. There is a great difference between that and placing in the Comptroller's office a lump sum of money from which the Public Service Commission should have the right to draw the State's share of the elimination of grade crossings. I will tell you exactly why that is so. The number of grade crossings to be eliminated in the year is determined by the amount that the State is willing to appropriate in that one year, and it should be that way. It may be the policy of an incoming administration to say that in the first department we shall put a million dollars of the State's money in the hands of the Comptroller to the credit of the Public Service Commission. We will put a million and a half in the second district. That is our policy. The Governor may say to the Legislature, "I propose that during this year of my incumbency of the office of Governor, there should be in the first district of

the Public Service Commission an appropriation of one million dollars." What is meant by that is that the State says to the different counties and to the railroads of the State, "We propose that you meet this million with a million of your money." Now, I don't think it is going to be possible to come in with plans ahead of time and submit them, because as a general thing the grade crossings are not picked out and cannot be picked out for elimination until, under the railroad law, or under the Public Service Law, somebody knows how much it is the policy of the State to spend, and the expenditure by the railroad and by the county is dependent upon what the State is willing to stand for. You never can get any plans.

Mr. Blauvelt — Would it not, in effect, in view of the pending applications for grade crossing eliminations, give to the Superintendent of Public Works the determination of the order and necessity of grade crossing eliminations and substitute his opinion in the place of that of the Public Service Commissions?

Mr. A. E. Smith — Well, while it may not exactly do that, it would raise a conflict of opinion in the Assembly and in the Senate, as between the Public Service Commissions and the Superintendent of Public Works. Now, with all respect to the Committee's study of it, they have failed to properly understand what this grade crossing proposition is. It is not a work done by the State. It is not a construction. It may be deemed to be an appropriation for work, but it is simply the State's share. You cannot get plans — if you do get them from any place, you should get them from the Public Service Commission, because it is before the Public Service Commission that all the arguments are made for the elimination of grade crossings and they are the ones to determine which particular grade crossing is most needed as to the elimination of tracks from the surface of the road. I am afraid you are getting into deep water if you leave the grade crossing eliminations in here, and it will be a very serious mistake because large appropriations were made for that this year. They have been neglected for a couple of years, and that was a great mistake.

Mr. Blauvelt — Mr. Chairman, I offer an amendment.

The Chairman — The Clerk will read the amendment offered by Mr. Blauvelt.

The Secretary — By Mr. Blauvelt: Page 1, line 8, strike out the word "highway", and the comma following. Page 1, line 9, after the word "work" insert "except highways".

Mr. Blauvelt — Mr. Chairman, without this amendment that I have offered, I feel that the work of the construction and improvement of highways of this State out of the highway

improvement fund would be seriously hampered. The people of the State have voted in the aggregate $100,000,000, or authorized a debt of the State to the extent of $100,000,000, to be spent under general laws for the construction and improvement of highways of the State. The Legislature has already, acting under constitutional authority, determined upon a comprehensive system of highways in the State, both State routes and county highways. The Legislature annually appropriates a lump sum of money against this bond issue and makes it available for highway construction and improvement during the current year. I do not think the Legislature has ever appropriated and made available in any one year more than $10,000,000. For several years it has been but $5,000,000. In the early part of the year it has been the custom for the Highway Commissioners to recommend or request that the Legislature make an appropriation to construct and improve a certain mileage of highways in the particular year. The Legislature has done that by the appropriation, as I say, of from five to ten million dollars. The engineering force of the Highway Department is constantly at work upon their surveys, their plans, their estimates and their specifications. Some of those plans, estimates and specifications are in process of being prepared during the period of a year or two. They are constantly being revised and amended down to the last day when they are advertised for letting. The Highway Department, in my opinion, cannot prepare a year ahead in detail the plans and estimates for the ensuing year's work. The practice has been during the early spring and summer for the surveyors to get out with their surveys and in the fall and winter to work up their estimates and prepare plans from the data of the engineers, and when the estimates are prepared and after the appropriation has been made, the highway department advertises for bids. It has been the practice almost monthly during the spring, summer and fall to hold lettings of contracts for highway construction. Now, remember, the Highway Department cannot anticipate all the work it can do during a year in time for the Legislature to make this lump sum appropriation. As I read the amendment, the Legislature could not make a lump sum appropriation in excess of the aggregate of all the estimates which the superintendent of public works might make in anticipation of the year's work. I think that the highway construction, the completion of this comprehensive construction of roads that we have to build, would be seriously hindered, and instead of building five hundred, or seven hundred or eight hundred miles of road annually, which the highway department has been able to build in the past, and to get competitive bidding on from the contractors of the State—

instead of having that amount of mileage constructed annually it would be cut in two, and the time for the completion of our system postponed for a considerable period of time, without any gain to the State, because the superintendent of public works should not nullify the acts of the people by his determination of whether or not a particular road shall be built. The people have already passed upon that in the authorizing of the debt for the construction and improvement of those roads. They have been determined upon, the necessity for construction has been passed upon, the money has been voted, the debt authorized, and now for the superintendent of public works to add his approval would seem to me to negative the whole proposition which the people have already voted upon. I hope my amendment will pass.

Mr. R. B. Smith —I am strongly in favor of Mr. Blauvelt's amendment. In my judgment, what is sought to be accomplished, and what is very properly the rule to be followed as to single improvements, other than highways, is not applicable to the improvement of highways under the present system where appropriations are made from the proceeds of bonds which have been issued. So far as county highways are concerned, for which a large part of the appropriation is used, before any money is available or can be spent at all, the estimate has been made, sent to the Board of Supervisors, the Board of Supervisors has made its appropriation and it is on record in the department, and the Boards of Supervisors of the several counties and the people of the State have already determined as to the necessity. What is the use of having some officer go and certify that over again?

Mr. A. E. Smith — In what manner was it determined as early as the first of February this year that $10,000,000 was needed for the construction and improvement of public highways?

Mr. R. B. Smith — I assume, by an estimate. But what of it? The money has been voted by the people of the State for that purpose. The Legislature has laid out the routes and declared the public necessity for the work. Now, why limit the amount of work that you can do in the fiscal year to certain specified routes which you must specify in your appropriation bill under this amendment or else it does not mean anything at all? Furthermore, it does not prevent the amendment of these plans, the revisions of estimates and costs, right up to the day that you let the contract.

Mr. Stimson — The plan that is laid out by statute is very much larger than will be covered by the amount appropriated in the bond issue, is it not?

Mr. R. B. Smith — Yes.

Mr. Stimson — So that there is a large amount of discretion involved each year in the legislative selection as to which routes will be improved that year or at all?

Mr. R. B. Smith — Yes, but the Legislature has said that all of the routes are necessary. It has determined what ones are to be improved. It simply makes available for the use of the highway departments funds which have already been raised by bond issues.

Mr. Stimson — So far as that $100,000,000, which is all we have got in sight for highways now, is concerned, the determination of this plan is not at all sufficient to fix the exact highways which are going to be improved, is it?

Mr. R. B. Smith — Why not?

Mr. Stimson — Because it is a very much larger plan than can possibly be covered by $100,000,000.

Mr. R. B. Smith — That is very true, but there is no restriction upon the Governor and the Legislature, within the constitutional limit, appropriating moneys out of current funds for such purposes, if they see fit. You have got your estimates for the county highways. The State highways are simply a question of how much you can do; how many contracts you can let. If there is any one thing that the people in this State in the country are interested in and want to have stopped, it is this interminable delay in highway improvement. We voted the money. We are delayed now. We are delayed by getting grade crossings fixed up, and that bothers us and bothers us, maybe for six months or a year before you get the railroad company and the county authorities and the State authorities to agree. We have not had anything but delays. There are five or six lettings of contracts for public highways throughout the year, and let me say that we are absolutely opposed to the interposition of any plan whatever which will increase delays in securing the improvements which we want just as quickly as we can get them.

Mr. A. E. Smith — You said that it was determined by the first of February of this year that $10,000,000 was needed for the construction and improvement of highways during this summer. On plans and estimates?

Mr. R. B. Smith — Yes, some sort of plans.

Mr. A. E. Smith — Well, what harm would it be to have these plans and estimates filed by the Superintendent of Public Works with the Secretary of State and thereafter have the Legislature give the $10,000,000, just as it gave it this year?

Mr. R. B. Smith — Will you tell me of what practical use it would be?

Mr. A. E. Smith — What broad practical use?

Mr. R. B. Smith — Of what practical use would it be?

Mr. A. E. Smith — I think anything that you can possibly do that will give the Legislature some light on what is being done with the money that they are appropriating here is a very useful thing for the whole State.

Mr. R. B. Smith — Well, the department of highways, or your board of supervisors, sends over a list of thirty highways, numbered consecutively, as the law requires them to be numbered. He is required to make some sort of a blue print and he is required to send over some sort of an estimate. That is not final; it is not conclusive, and it may not even be intelligible, but it complies with this provision. Then, simply for the purpose of limiting the number of highways which he can let under contract during that year, it makes further delays. It accomplishes nothing, so far as the action of the Legislature is concerned, and I see no use of interposing it here at all.

Mr. Stimson — I was informed, I think, by the representative of the commissioner of highways himself that in some cases, owing to defective plans, they had been compelled to ask for more money than was actually needed, and that they have found in such cases that the locality always insisted that the full amount of money appropriated should be spent on that road, even when, in their opinion, it was not necessary.

Mr. R. B. Smith — Well, that is not true.

Mr. Stimson — That came from the department.

Mr. R. B. Smith — That is all right. I know something about it myself. The cases to which you refer must be where the appropriation made by the county is found to be insufficient, because there is no individual appropriation made by the State for any particular highway. When the appropriation made by the county is found insufficient, then the Highway Commission goes to the county and asks the board of supervisors for an additional appropriation to meet the county's thirty-five per cent. That is the only time that occurs. Under the Highway Law the county never knows what it is going to cost until you get the final certificate from the Highway Department, and they have not always complied with the law in that respect.

Mr. Wagner — The delegate does not mean to say that the State never makes a specific appropriation for a specific highway?

Mr. R. B. Smith — Oh, you have for some of your preferential routes — expedited routes, or whatever you call them.

Mr. Wagner — More than that. The Legislature has appropriated out of the general fund for the construction of a highway.

Mr. R. B. Smith — That is possible, but it is not consistent with the system of highway improvement — county highway improvement and State highway improvement under which we are

operating and to which I refer. Of course, it appropriates for the improvement of highways over all the Indian reservations, but it does it in a lump sum; over all State lands, but it does it in a lump sum. We used to split it up but in recent years the appropriations are made in bulk and turned over to the Superintendent of Public Works for that purpose, and that is the present policy of the State.

Mr. Blauvelt — Mr. Chairman, I think I can answer Senator Wagner by saying that since 1908 but one road, the construction of but one road in the State has been authorized out of an annual appropriation, and that was in Greene county.

Mr. Wagner — Yes.

Mr. Blauvelt — And, with that exception, all the highways constructed or improved out of the public moneys of the State have come out of the highway improvement fund.

Mr. Cullinan — Mr. Chairman and Gentlemen: This discussion in regard to the merits of this bill make it all the more important that we have a sensible enactment in this State in reference to the public works of the State, and in the bill which the Committee on Governor and Other State Officers will report during the night or to-morrow we have provided that the Superintendent of Public Works shall have control of all the physical activities of the State, including the much-mooted highway. Now, an officer charged with that great duty will be able to take up all of these great questions, including the question referred to by Mr. Smith. Take up the highways, take up the canals, and have a symmetrical method of improvement of all the physical activities of the State, one of the most important of which will be a great saving to the people of this State, in the construction and improvement of all of the public work. I remember when we had the pleasure of hearing General Wotherspoon before the Committee on Governor and Other State Officers, when he was asked what would be the result of putting all of these physical activities under one head, he made the remark that he might be able, in the saving on the purchase price of cement, to almost meet the expenses of his office: and I can see that this discussion merely adds to the necessity and the importance of having a symmetrical form — a symmetrical statute or constitutional provision providing for just the things that are now making an unharmonious and discordant method in the physical activities of the State.

Mr. A. E. Smith — I suggest that the Committee advance this bill in its present form, or at least recommend to the Convention that this bill in its present form be put on the order of third reading, and the two matters which are under discussion to-night, in the meanwhile can be looked into, and it will be agreeable, I take

it, to the Chairman of the Committee, or to any of the members, to make any motion or amendment on third reading which may be deemed advisable.

Mr. Young — Mr. Chairman, I don't want to speak unless you are going to take some action, and, if you are, this is the time to speak.

The Chairman — The Chair is about to put the question.

Mr. Young — If that is so, Mr. Chairman, I cannot support the bill, without amendment, for two reasons, I cannot support the bill, although I am in favor of this proposition for two reasons. First, it appears, under the contemplated change in the State government, the appropriations must be recommended by the Governor in his budget. The second thing is that this proposition seems to put it in the hands of the Superintendent of Public Works to say what, if any, highways shall be constructed or improved. On these two propositions I cannot support this Proposed Amendment.

Mr. Stimson — Mr. Chairman, may I have one moment to answer Mr. Young? In the first place, as to the Governor's budget, this provision is not limited to matters which may be in the budget at all, because under the budget amendment it remains within the power of the Legislature to initiate legislation after the budget is adopted, and this would apply to that class of legislation as well as to the legislation in the budget. In the second place, in regard to his second suggestion, if the amendment in regard to the consolidation of the departments of the State recommended by the Committee on Governor and Other State Officers is carried out, the Superintendent of Public Works, or whoever the officer is, who has charge of the highways, would be the proper officer to make the recommendation in question.

Mr. Young — That is, he will have the power to select the highways to be improved.

Mr. Stimson — The Legislature does not have to follow his advice, Mr. Young.

Mr. F. L. Young — That is what I assume.

Mr. Stimson — I answered that question earlier in the evening, when you put that question to me specifically. The advice of the Superintendent of Public Works is not binding on the Legislature. It is merely advisory in the light of which they must act, and they can turn it down absolutely provided it is before them.

Mr. E. N. Smith —I do not want to extend this debate, and I am in entire sympathy with the plan and purpose of the Finance Committee, but I think it is very unwise to leave in this proposal the provision submitting highways which are to be built out of the funds which the people have voted to the restrictions of this provision. I think it is a great mistake from a practical standpoint

and I think it is a matter that would not receive public approval if it were generally known that there would be placed restraint upon the future construction of highways. Now, I am not entirely satisfied that the amendment offered by Senator Blauvelt is the last word on the subject, but so long as it is the only thing we have before us to vote on to-night, I feel that the amendment ought to be adopted.

Mr. Stimson — I hope the amendment will not be adopted, although I would be very glad to consider any further light on this question or any further light produced between now and the time of the third reading. The amendment has been very carefully considered and for the reasons which have been stated we thought that it would not prevent any legislative discretion being exercised in regard to highways, but would merely insure that there would be proper business methods adopted before the Legislature should act.

Mr. A. E. Smith — I want to make one observation which I have in mind concerning what Mr. R. B. Smith said. Here is the history of the ten million dollar fund: Introduced in the Assembly on the 24th of January. Reported from the Ways and Means on order of second reading on the third of February; ordered to third reading on the fourth; passed on the tenth of February; received in the Senate on the 11th of February; passed the Senate on the 15th of February; sent to the Governor on the 16th of February, and became chapter 10 of the Laws of 1915 on the 23d day of February. Now all the information that that committee had was based upon something that somebody knew, and that is all that it required, and that is all that the members of the Legislature have, that knowledge before them. That is all.

The Chairman — The Clerk will read the amendment of Mr. Blauvelt.

The Secretary — By Mr. Blauvelt. Page 1, line 8, strike out the word "highway" and the comma following. Page 1, line 9, after the word "work" insert "except highways".

The Chairman — All those in favor of the amendment signify by saying Aye. Contrary, No. It appears to be lost, and is lost. All those in favor of the original amendment signify by saying Aye. Those opposed, No. The amendment is adopted.

Mr. Wickersham — Mr. Chairman, I move that the committee do now arise and report progress and ask leave to sit again for the completion of the special orders and report the action of the committee.

The Chairman — All those in favor of the motion signify by saying Aye. Contrary No. It is carried. (The President resumes the Chair.)

The President — The Convention will come to order.

Mr. Stanchfield — The Committee of the Whole asks leave to report as follows: That we have had under consideration General Order No. 27, with reference to voters, and by arrangement that is to go over to a succeeding date. With reference to General Order No. 52, we report in favor of the passage of that measure with amendment; and with reference to General Order No. 47, we report in favor of the passage of that amendment with amendments. And we have also had under consideration General Order No. 38 and we report the same with amendments. Likewise, General Order No. 62, and we beg leave to sit again and take up further general orders. And in regard to No. 62, we report in favor of its adoption.

The President — The question is on agreeing to the report of the Committee recommending the adoption of General Order No. 62. All in favor of agreeing to the report of the Committee will say Aye, contrary No. The report is agreed to and the Proposed Amendment is advanced to the order of third reading. The question is upon agreeing to the report of the Committee on General Order No. 52, which is the provision relating to serial bonds. All in favor of agreeing to the report of the Committee will say Aye, contrary No. The report is agreed to and the Proposed Amendment is advanced to the order of third reading. The question is upon agreeing to the report of the Committee on General Order No. 47, the report of the Committee on Canals. All in favor of agreeing to the report will say Aye, contrary No. The Ayes have it, the report is agreed to and the Proposed Amendment is advanced to the order of third reading. The question is upon agreeing to the report of the Committee on General Order No. 38, proposition reported by the Public Utilities Committee.

Mr. Griffin — Mr. President, I move to disagree with the report of the Committee. And I move that the motion go over until to-morrow morning.

The President — The motion cannot be entertained. The question before the House is upon agreeing to the report of the Committee.

Mr. Griffin — Mr. President, I desire to debate the motion.

The President — The gentleman cannot proceed with debate. The question before the House is upon agreeing to the report. That cannot be displaced by a mere negative.

Mr. Wickersham — Mr. President, I move the previous question on No. 38.

The President — The previous question is moved upon agreeing to the report of the Committee upon No. 38, which is the article relating to public utilities.

Mr. Griffin — I believe I have the floor and the right to debate the proposition.

Mr. Wickersham — Mr. President, the motion is to agree.

The President — The gentleman from New York, Mr. Wickersham, was recognized and had the floor.

Mr. Griffin — But, I did not relinquish the floor, Mr. President, and you recognized me, and after recognizing me, and before I had an opportunity to proceed with my statement, I heard Mr. Wickersham make some motion. I have been recognized and had the floor and was about to make my remarks.

The President — The gentleman, Mr. Griffin, made a motion which the Chair decided was out of order. Thereupon Mr. Wickersham moved the previous question, on the question before the Convention, and that is upon agreeing to the report.

Mr. Griffin — Upon that motion to agree with the report, I desire to debate.

The President — The previous question has been moved. The Chair must put it.

The President — The question is, shall the main question now be put? All in favor will say Aye, contrary No. The Ayes have it and the previous question is ordered.

Mr. Griffin — Mr. President, I rise to a point of order.

The President — The gentleman will state his point of order.

Mr. Griffin — My point of order is that the hour of adjournment has now arrived — and I believe no further business is in order except a motion to adjourn.

The President — The question is whether or not we will continue, after the previous question has been ordered by the Convention. The Convention will continue until after that order has been executed. The question is — shall the Convention agree to the report of the Committee of the Whole recommending the adoption of General Order No. 38, public utilities article? All in favor of agreeing to the report of the Committee of the Whole will say Aye, contrary No. The Ayes have it and the report is agreed to.

Mr. Griffin — Mr. President, I call for a division.

The President — A division is called for. All in favor of agreeing to the report of the Committee will rise and remain standing until counted. The gentlemen will be seated. All opposed to agreeing to the report of the Committee will rise and remain standing until counted. The report is agreed to.

Mr. Rodenbeck — The Committee on Revision and Engrossment presents the following report.

The President — The question of agreeing to said report goes over until to-morrow.

Mr. Wagner — May I ask under what order of business it would be in order to bring the report of the Committee of the Whole up to-morrow?

The President — That is the report on the literacy test?

Mr. Wagner — Yes.

The President — The Chair thinks it would come in under the unfinished business of General Orders. The House will have to pass upon the request stated or the arrangement stated by the Chairman of the Committee of the Whole, that action upon this report is to be postponed until to-morrow. The question is upon the request that action upon this report be postponed until to-morrow. All in favor of the postponement will say Aye, contrary No. The postponement is agreed to.

Mr. Wagner — Mr. President, I understand that the report which has been submitted by the Committee of the Whole, that the consideration of that report has been postponed until to-morrow.

The President — That is the case.

Mr. Tanner — I move that the Committee be discharged from further consideration of General Order 59; that the amendment be reprinted as amended and recommitted, and I move further that it retain its place on the calendar.

The President — All in favor of the amendment will say Aye, contrary, No. The motion is agreed to.

Mr. J. L. O'Brian — The Committee on Rules submits the following report:

The Secretary — Mr. O'Brian, from the Committee on Rules, submits the following report and recommends the adoption of the following special rule: Resolved, That the following proposed amendments be made special orders for consideration in the order named immediately upon completion of the present calendar of special orders, namely: General order No. 45, Highways. General order No. 57, Future Amendments. General order No. 58, fixing the time when the Constitution takes effect. General order No. 59, Governor and Other State Officers.

Mr. J. L. O'Brian — Mr. President, I move the adoption of the rules.

Mr. Wiggins — I offer as an amendment that the rule as reported by the Rules Committee, be amended so as to provide that General Order No. 59, being the Governor and Other State Officers amendment, be made a special order for Monday night. Now, I do that for the reason that that bill has been amended already and not been upon the members' desks so that they have considered in what manner it has been amended or given proper consideration, and as I view the situation it is one of the very big questions left yet for this Convention to consider. It is a matter which I think should be given due and careful consideration by all of the delegates to this Convention, and I know if it is taken

up at that time there may be some of the delegates who will of necessity be away on Saturday, and I feel sure that it cannot be reached before that time, and those who disagree with the position which I entertain with relation to a portion of the bill will, I am sure, appreciate the fairness of giving everybody an opportunity to be heard on this matter and to be present when the full discussion is had. As I understand the calendar, there are many amendments which are under consideration and which can be passed upon and which must be passed upon by this Convention before it adjourns. There are also many matters on the order of third reading which can be passed upon if the Convention so desires, and which will occupy a considerable length of time and in fairness to everybody concerned in this matter, I think this should be put down for a time which would be, as I have said, on Monday night, give everybody an opportunity of being heard, and give everybody an opportunity of considering this proposition upon the merits after they have had an opportunity of examining the amended bill which Mr. Tanner has introduced to-night.

Mr. J. L. O'Brian — It seems to me that this question of procedure is merely a question of whether or not the Committee on Rules should be reviewed by this Convention, after having used its best judgment in arranging the programme of the business of the Convention, and I do not think that the Convention should vote upon this programme upon the assumption that the gentleman who has just spoken will not be here on Saturday.

Mr. Wiggins — I expect to be here, Mr. O'Brian, as I was last Saturday.

Mr. J. L. O'Brian — The question which has been referred to, as he has properly said, is one of the large questions before this Convention. It has been under discussion by the delegates and by the public for some time. The convention should finish its work on the 4th of September, one week from Saturday. It is clear that this measure will take several days at least for discussion, perhaps three or four, and while in some respects, as anybody familiar with it knows, it is not a complicated measure, yet, it is entirely possible that with this measure, just as on the measure relating to home rule or the short ballot or the public utilities, the Convention may see fit to send some phase of the bill back to the Committee for further amendment, and yet it may not do so. Now, if this bill is to have fair consideration, its consideration should begin as quickly as possible. Under this programme, the Proposed Amendment, should be reached, in my opinion, to-morrow night, and at the latest Friday morning, and those familiar with it say that it will probably take three or four days for discussion.

Mr. Olcott — May we be assured by the Committee on Rules that there will be no vote on such an important subject until Monday?

Mr. J. L. O'Brian — Mr. President, the Committee on Rules is not in control of the bill on the floor of the Convention.

Mr. Olcott — That I know perfectly well, and I am speaking in view of your statement that the amendment may take three or four days, and I was wondering whether or not that assurance might be given that we might be really sure of a large gathering if not an entire Convention present before the vote is reached.

Mr. J. L. O'Brian — This bill is of such importance that I entertain no doubt that on this last Saturday the delegates will make a special endeavor to be present. I am not in a position to give the assurance as to the guidance of this bill, because it is not in charge of the Committee on Rules. The programme as arranged is a fair programme. There is no bill before the Convention that has been more talked about. While, as the gentleman who has just spoken remarked, it is true that it is amended in one particular, it is only amended in one particular, and I certainly hope that with a desire to promote the proper consideration of the business of this Convention during the closing days, the Convention will support the Committee on Rules in the programme which it has placed before you, because after careful discussion of the matter it represents the best judgment of the Committee and I hope that the amendment offered by the gentleman from Orange will be defeated by the Convention.

Mr. Wiggins — Just a word and then I am through. I don't want to occupy the attention of the Convention over this discussion, but it seems to me that Mr. O'Brian's statement alone is sufficient to carry this motion to amend without a dissenting vote. He will not give to this Convention an assurance that a vote will be had when the members will be here if, for any reason, they may be absent on Friday, by reason of necessity. Now, it can be no rebuke to the members of the Rules Committee. It is only a matter of fairness and justice that the members of this Convention should be given ample opportunity or a notice when this matter is to come up, so that they can vote upon that matter and be present and hear the entire discussion. I think from my examination of the calendar that there is enough here to occupy the attention of the Convention until Monday night and if that is so, the wheels of progress will not be clogged in the meantime.

Mr. Wiggins — Mr. President, I ask for a rising vote.

The President — All in favor of the amendment offered by Mr. Wiggins will rise and remain standing until counted. The gentlemen will be seated. All opposed to the amendment offered

by Mr. Wiggins will rise and remain standing until counted. The gentlemen will be seated. The Clerk will announce the result.

The Secretary — Ayes, 58. Noes, 49.

The President — The amendment is carried. The question is upon the rule as amended. All in favor of the adoption of the rule as amended will say Aye, contrary No. The rule is agreed to.

Mr. Low — By authority of the members of the Cities Committee, who are present today, fifteen in number, I move to discharge the Committee on Revision and Engrossment from further consideration of General Order No. 50, to amend the same as indicated, and recommit as amended to the Committee on Revision. I should be glad if the Clerk will read the amendment and I will explain it in one moment.

The President — All in favor of the motion will say Aye, contrary No. The motion is agreed to. Any further special business? The Secretary will read the report of the Committee on Revision and Engrossment.

The Secretary — Mr. Rodenbeck, from the Committee on Revision and Engrossment, to which was referred proposed Constitutional amendment, introduced by Mr. Dow, from the Committee on Conservation of Natural Resources, No. 825, introductory No. 708, entitled proposed Constitutional amendment, to insert in the Constitution a new article in relation to the conservation of natural resources; Also, proposed Constitutional amendment by Mr. Steinbrink, No. 827, introductory No. 371, entitled proposed Constitutional amendment to amend section 11 of article VIII of the Constitution, in relation to duties and powers of the State Commission in Lunacy, reports the same examined and found correct and properly engrossed. By Mr. Rodenbeck, from the Committee on Revision and Engrossment, to which was referred proposed Constitutional amendment introduced by the Committee on the Judiciary, No. 828, introductory No. 718, entitled proposed Constitutional amendment, to amend article six of the Constitution generally, reports the same examined and found correct and properly engrossed.

Mr. Wickersham — Mr. President, I move we adjourn.

The President — All in favor of the motion to adjourn will say Aye, contrary No. The motion is agreed to and the Convention stands adjourned until ten o'clock to-morrow morning. Whereupon at 11:30 p. m. the Convention adjourned to meet Thursday, August 26, 1915, at 10 o'clock a. m.

THURSDAY, AUGUST 26, 1915

The President — The Convention will please be in order. Prayer will be offered by the Rev. J. Addison Jones.

The Rev. Mr. Jones — Let us pray. Oh Eternal God, in whom is the hope of all our days, we humbly pray that Thou wilt attend us with Thy favor as we enter upon this new day of life. Reveal unto us Thy purpose in its events and in its experiences; show us Thy meaning in its gifts and its opportunities. Assure us of Thy help in its labor; provide for our bodies and our minds such vigor as shall be needed for our allotted service. Come Thou as the sharer of our delights, as our helper in the stress of toil, as the companion of our friendships and the consoler of our griefs, and the crown of all our rejoicings. We thank Thee for this land in which we live, for its wholesome liberties and abounding opportunities. Grant that here the paths which lead to the summits of achievement and honor may ever remain open to the sons of disadvantage as well as to the sons of privilege. Here may we recognize no caste but character; here may we acknowledge no standard of distinction save personal merit, and call for no credentials save those of ability to get the right things done in the right way. So may the blessings of our liberty be open to all men irrespective of pedigree or position and grant, we beseech Thee, that our nation may stand firm in the love and practice of Thy righteousness which exalts peoples. For Thy Name's sake, Amen.

The President — Are there any amendments to be proposed to the Journal as printed and distributed? There being no amendments proposed, the Journal stands approved as printed. Presentation of memorials and petitions. The Chair lays before the Convention a communication from Mr. Rosslyn M. Cox, President of the Conference of Mayors, which will be referred to the Committee on Cities. Also a communication from the city clerk of the city of Rochester, which will be referred to the Committee on Canals. Also a communication from William McAdoo, of New York, which will be referred to the Committee on the Judiciary. Notices, motions and resolutions. The Secretary will call the roll of districts.

Mr. M. Saxe — Mr. President, I offer the following.

The Secretary — Mr. Saxe from the Committee on Taxation moves to recommit proposal No. 812, Int. No. 679, being the article on taxation, to the Committee on Taxation, with instructions to amend as indicated and report forthwith, said proposal retaining its place upon the third reading calendar. On page 2, line 7, strike out the words "any other article" and substitute therefor the words "section two of article ten".

The President — Those in favor of the resolution will say Aye. Contrary, No. The resolution is agreed to.

Mr. Schurman — I offer the following.

The Secretary — By Mr. Schurman: Resolved, That beginning with Friday, the 27th, next, the morning sessions of this Convention shall open at 9:30 A. M. and close at 1:30 P. M., and that the evening sessions shall close at 11 P. M.

Mr. Schurman — I ask that that be referred to the Committee on Rules.

The President — Is there objection to the reference of the resolution to the Committee on Rules? The Chair hears none and it will be so referred.

Mr. Tuck — I ask that Mr. Curran of the 46th district be excused from attendance to-day. He is unable to be present.

The President — All in favor of granting the excuse will say Aye. Contrary, No. The excuse is granted. The Sergeant-at-Arms will cause the workmen in the rear of the Chamber to desist at present. The clock can be regulated during the recess.

The President — The workman will take his hat off. Proceed.

Mr. J. S. Phillips — I ask unanimous consent that my district be called again. I was engaged in conversation and did not hear it called.

The Secretary — Forty-third district.

Mr. J. S. Phillips — Mr. President, last night the Rules Committee brought in a rule arranging the order of business. I was one of the gentlemen who opposed the adoption of the report made by the Rules Committee; in other words, I voted for the amendment offered by Mr. Wiggins. At that time it seemed to me that it was the only fair thing to do, inasmuch as the amended report from the Committee afforded no assurance that the vote would not be taken until next week, say, Monday. Therefore it seemed to me like a fair proposition. I understand, however — which I should have understood last night — that the Chairman of that Committee has been somewhat indisposed and is anxious to have this matter disposed of. It is an important matter. I think assurance can be given that the vote will not be taken until next Monday or the fore part of the week, and it seems to me that we might possibly during to-morrow and Saturday debate the question and so be in a position to take a vote upon it at the beginning of the week. In view of that, Mr. President, I now move to reconsider the vote by which the Wiggins amendment was adopted.

Mr. Quigg — Mr. President, I ask that the action on the motion be deferred for a moment. Mr. Wiggins does not seem to be present at the moment. It would seem as though we might wait —

The President — Is there objection to deferring action upon

this motion? Have you any suggestion, Mr. Quigg, as to the point of time or the point in the proceedings to which you wish the motion postponed?

Mr. Wickersham — I suggest until the end of the regular order of business, Mr. President.

Mr. Quigg — Yes, Mr. President, until the regular order of business.

The President — Is there objection to postponing that until the regular order of business? The Chair hears none. It is so ordered. Reports of standing committees. Reports of select committees. Third reading. The Clerk will call the calendar.

Mr. Wickersham — Mr. President, I move we suspend the order of third reading for the day.

The President — It is moved that the order of third reading be suspended. Are there any remarks to be made upon that? All in favor of the motion will say Aye. Contrary, No. The noes appear to have it. The noes have it. The secretary will read the calendar.

Mr. Wickersham — Mr. President, I ask for a division on the vote on my motion to suspend.

The President — A division is asked for on the motion to suspend the order of third reading. All in favor of suspending the order of third reading will rise and remain standing until counted. The gentlemen will take their seats. All opposed will rise. The motion is manifestly carried. The Convention will go into General Orders.

Mr. C. H. Young — Mr. President, I move to agree with the report of the Committee of the Whole on the literacy amendment, and ask for a roll call.

The President — Mr. Young moves to agree with the report of the Committee of the Whole on General Order No. 57, known as the literacy test. May we have a little less confusion? The Convention will be in order. The report of the Committee of the Whole, recommending the passage of the Proposed Amendment, General Order 27, relating to the establishment of a literacy test, is now before the Convention, and the question is will the Convention agree to the report of the Committee of the Whole?

Mr. Burkan — Mr. President, is the question open to debate?

The President — The question is open to debate.

Mr. Burkan — Mr. President, the amendment before the Convention flies in the face of the traditions and long-established policy of the State concerning free and unrestricted universal suffrage. In the Convention of 1846 but six votes were cast in favor of a literacy test. In the Convention of 1867 the Committee on Suffrage reported adversely against a literacy test. In

its report the Committee said: "Man's relative capacity is not absolutely measured by their literary acquirements; and the State requires the illiterate equally with others to be taxed for her support, and to shed their blood in her defense. We prefer that she shall persist in her noble efforts to instruct and enlighten all her sons by means less insidious and more general than disfranchisement." In the Convention of 1894 a similar amendment, though favorably reported by the Suffrage Committee, was never debated in Convention. Literacy is not a measure of character. The literacy test is not a test of fitness for good citizenship. It is not a test of integrity, industry, sobriety, frugality and patriotism, which to my mind constitute the basic elements of good citizenship. Grover Cleveland in discussing the value of the literacy standard as a test for citizenship said: "The ability to read and write, in and of itself affords, in my opinion, a misleading test of contented industry, evidence of a desirable citizenship or a proper apprehension of the benefits of our institutions." The proponents of this bill say that failure to respond to the test does not involve forfeiture of citizenship but simply affects the elective franchise. The highest and most priceless privilege of citizenship is the right to participate and have a voice in the government — the right to vote for all officials and for the adoption and rejection of fundamental laws. The first and foremost obligation of citizenship is military service. The test for efficient military service is patriotism, heroism and physical strength and endurance. The recruiting officer in the selection of material to furnish food for the cannons in times of the country's peril is not so much concerned with the literacy of the recruit as to his behavior under fire.

If you are going to insist upon the full and fair performance of the highest obligations of citizenship you will have to permit the exercise of the highest privilege of citizenship, untrammeled and unrestricted by any tests of the kind prescribed in this bill. In its final analysis the argument of the proponents is that this bill will elevate the electorate in respect of education and intelligence and will make for universality in the use of the English language. The way to educate the electorate, to make it intelligent, is not by disfranchisement but through the instrumentality of your schools and institutions of learning. Is education or intelligence demonstrated by the ability to read or write the twenty or thirty lines that the Legislature may prescribe as a condition of exercising the elective franchise? Of what value is the ability to read and write without an understanding and comprehension of the vital spirit of our institutions? Are you going to re-enact the farce and silly performance conducted by the naturalization officers in making

new citizens? The naturalization laws require a privilege of civics as a condition of citizenship. Illiterates do not seem to find any difficulty in answering the inquisition of the naturalization officials satisfactorily. The registry officers may use this requirement as to tool of oppression and fraud and it will certainly lead to the disfranchisement of many citizens who can comply with the requirements. To argue that this requirement to read or write twenty or thirty lines of English will induce foreigners to abandon their mother tongues, to read an English instead of their foreign newspapers is idle. Custom and long habit cannot be broken so easily. It is abhorrent to believe that those who toil by the sweat of their brows, who create and improve prosperity, who aid in the development of the great resources of this State, and in the building up of its industries and commerce shall be disfranchised because they can not comply with an irksome test. This proposal aims to penalize an unfortunate class of our population. Illiteracy is not ignorance. It is a sad misfortune. It may be an accident of birth. It may be a lack of opportunity in the case of foreigners because of oppression, denial and discouragement. It is not a crime, however, and you have no right to classify illiterates with criminals. The test will not reach those against whom this amendment is leveled. The "Intellectual Proletariat" who inflames the discontented, who preaches doctrines, and spreads propagandas dangerous to our institutions, who adds to the ferment and discontent, complies most satisfactorily with the test. Education is an essential supplement to conduct his agitations and campaigns of distrust and dislike. I believe that this Convention should reconsider its vote and renounce once and for all this unjust attack.

Mr. C. H. Young — Considering the length of the debate and the fact that I had no chance to respond at the end of the debate, I should like to submit two or three propositions inside of the five minutes, if I may, at this time.

The President — The gentleman is in order.

Mr. C. H. Young — In the first place this proposition disfranchises nobody. In the second place it disfranchises nobody now on the way to citizenship, unless they do not reach that stage before January 1, 1918. In other words, any person who is entitled to naturalization and to vote before the first day of January, 1918, is not affected by this amendment.

Mr. Quigg — Mr. President, I rise to a point of order.

The President — The gentleman will state his point of order.

Mr. Quigg — I hesitate to make it, because I cannot hear very well, but I am certain that I cannot hear at all if there is not some order.

The President — The point of order is well taken. Will the delegates please take their seats.

Mr. C. H. Young — Mr. Chairman, at this late hour, I merely wish to address myself to the expediency of this proposition. There are nineteen States in the United States that have at this moment a literacy test. In no State of the United States has that test ever been beaten by the vote of the people. It has always had a tremendous majority. In Connecticut, our bordering State, the vote was 37,000 to 4,566. There is no reason for any person in my hearing to fear to vote for this amendment on the ground that it will not be ratified by the people. All experience shows that it has always been ratified by the people, when they have had an opportunity to express themselves on this subject, and if this Convention has the courage of its real convictions, it will pass this amendment, it will pass it, and it will do more to pass your Constitution than any amendment you can pass here. If there is anything but experience to guide you I don't know what it is. If you can take the vote of one State and separate it from the vote of another State you cannot help the situation, when you have States with about 30 per cent. of foreign population voting overwhelmingly for this amendment as was the case in California and Connecticut.

Gentlemen, I have occupied my time.

Mr. Brackett — I cannot see how the gentlemen who have spoken with respect to this proposition, notably the delegate from Tompkins and the delegate from New York, Mr. Marshall, can regard this as an attack upon any class of citizens, or how they can regard it as a scheme of segregation in the policy of the State. It is, in my opinion, a scheme of education. It is a mere question of what is right as a test of citizenship. Our statutes are full of provisions that require that we should educate our own children. They are full of provisions that if we do not subscribe to them, we violate the penal law. If I fail to send my child to a school during a certain number of days of a year, if I fail to comply with the educational requirements, I am haled before a proper court. What is the object of these requirements? It is that our citizenship shall be educated, shall have a certain degree of education and that the whole standard of the State shall thereby be raised. Shall you require less of the stranger who comes within your gates than you do of yourself and of your own children? Yes, you require less, and you will require much less if this bill is passed, although you are requiring a little more. But, will you tell me any reason on earth why a person coming from a foreign country shall not have a little benefit by complying with this test before he shall become a citizen when you require so

much of your own people? I don't mean to say that you do in terms, but you do in fact. I am not, Mr. President, unmindful of the people and the race for whom Mr. Marshall speaks. I yield to no man in my admiration for the brilliant men and the great qualities of that people as a race. I recall that magnificent passage of Sir Walter Scott in Ivanhoe where the maid Rebecca, in retort upon the Knight, reminds him that with all his pride of ancestry she belongs to a race that goes back to that high time when the Divine Presence stood between them and the cherubims and when they could hear the Awful Voice. I would not lift my right arm to do anything that I thought was unjust or that I thought would be an affront to that brilliant race, many of whom, so many hundreds of thousands of whom have become citizens and our very best citizens, and I hold this that there is no race in all the world that will so quickly comply with this measure, which is a provision which provides for a very slight test of citizenship, as this very people. Why, Mr. President, a matter of two years, or a year and a half before the test shall be required, there is not a child six years of age in your school, but what will comply with this slight test. Isn't it right? Is there any possible reason that can be urged that it is not right? Some say, is it expedient to do it, and yet the expediency is beyond all question, and demonstrable by figures which the delegate from Westchester, Mr. Young, has produced here, showing not only that it is expedient, but that it is to the highest degree expedient, and so, Mr. President, my only fear is that the prediction of the gentleman from Westchester, Mr. Young, will come true. That it will prove so overwhelmingly expedient that it will help carry the Constitution with some of the very miserable provisions which are proposed; that it will prove so overwhelmingly an aid that those provisions will be carried into our basic law.

The President — The Secretary will call the roll. Those in favor of agreeing to the report of the Committee of the Whole will, as their names are called, answer Aye, and those opposed, will answer No.

Those who voted in the affirmative were: Aiken, Angell, Austin, Barnes, Barrett, Baumes, Beach, Bell, Berri, Betts, Bockes, Brackett, Bunce, Clearwater, Coles, Devo, Dick, Dow, Dunmore, Dykman, Eggleston, Fancher, Ford, Franchot, Greff, Griffin, Hale, Heaton, Hinman, Johnson, Jones, Kirby, Landreth, Law, Leggett, Lennox, Lincoln, McKinney, Meigs, Nixon, Nyc Olcott, Ostrander, Owen, Parker, Pelletreau, Phillips, S. K., Rosch, Ryder, Sanders, Smith, E. N., Standart, Steinbrink, Stowell, Vanderlyn Van Ness, Wadsworth, Waterman, Weed, Westwood, White, C. J., Wickersham Wiggins, Williams, Winslow, Young, C. H., Young, F. L.— 67.

Those who voted in the negative were: Adams, Allen, F. C., Baldwin, Bannister, Bayes, Blauvelt, Brenner, Burkan, Buxbaum, Byrne, Clinton, Cobb, Cullinan, Dahm, Dennis, Donnelly, Donovan, Dooling, Doughty, Eisner, Endres, Eppig, Fobes, Foley, Green, Haffen, Harawitz, Latson, Leary, Linde, Lindsay, Low, McKean, Mandeville, Mann, Marshall, Martin, L. M., Mathewson, Mealy, Mereness, Mulry, Nicoll, C., Nicoll, D., O'Brian, J. L., O'Brien, M. J., Parmenter, Parsons, Phillips, J. S., Potter, Quigg, Reeves, Rhees, Rodenbeck, Ryan, Sargent, Saxe, J. G., Saxe, M., Schoonhut, Schurman, Sears, Sharpe, Sheehan, Shipman, Slevin, Smith, A. E., Smith, R. B., Stanchfield, Tanner, Tuck, Unger, Wafer, Wagner, Ward, Webber, C. A., Weber, R. E., Wheeler, President — 77

When Mr. Baldwin's name was called he said — I desire to explain my vote on this proposition. Since the Convention began we have heard a great deal about privilege and its relation to government. The greatest privilege that any country can confer upon a citizen is the right to participate in government, the right to vote. It is a privilege which dignifies that citizenship and knits the recipient to the body-politic. This privilege during all time has been the distinguishing feature between the freeman and the bondman. In our own land at the end of a devastating war that impoverished our people for a generation, we abolished the demarcation between the freeman and the slave, as hostile to the sublime principle that underlies our traditions and our prosperity. In so doing, this great privilege, the right to vote, we gave to a whole people. That great war was a struggle for a principle, it was to remove an inconsistency in our institutions. Our fathers fled from the old world to a wilderness— from the world of classes and special privileges to a new land. Here they established a new government, not based upon the privilege of religion, not based upon the privilege of education or culture. Here they proclaim a new doctrine, "equal opportunity for all." This western land has been the door of hope for the wearied and oppressed of all nations and for generations we have kept that door open and have welcomed the new citizen, asking only of him, that he forswear allegiance to foreign prince and potentate, and that he join with us in making this "the land of the free" in fact as well as in song. For generations we have not been disappointed. When a call to arms has been made we have not exacted the literacy test and we have found our adopted sons standing shoulder to shoulder with those whose citizenship was an inheritance. Mr. President, why should we try to get away from the old land marks? Why should we always chase after the new? Why should we mar the glorious traditions of our fathers by establishing this new privileged class? The

Constitution that has served us so well should not be lightly dealt with. Under it we have prospered to a remarkable degree and the unrest which is now felt is largely caused by our prosperity and not by our adversity. Mr. President, I vote No.

When Mr. Beach's name was called he said — Mr. President, I desire to explain my vote. As I listened to the eloquent remarks of Delegate Marshall, I was impressed not only then but every time he has spoken in this Convention with the real, main reason why he is such a power in moulding opinion in this Convention, and out of it, and that is owing to his wonderful mastery and command of the English language. I care not what nation a man comes from so long as before he votes, he goes through what another Jewish master of the English language has so eloquently and so graphically described as the melting pot, and part of going through the melting pot is acquiring the language of the country.

I can corroborate what Dr. Schurman said about our newly arrived citizens being anxious that their children should learn when they go to school. I have seen and read hundreds of essays and compositions written by the Poles and the Italians, and we don't find anything in those compositions about Gambetta or Garibaldi or Kosciusco, but we do find essays about George Washington, Thomas Jefferson, Alexander Hamilton, Benjamin Franklin, Daniel Webster and Abraham Lincoln and when they come through our schools they have a thorough idea of the spirit of our institutions. Away back in 1884, President Benjamin Harrison, said " Let us be thankful and rejoice that the gates of Castle Garden swing inward and not outward," and in spite of the fact that the port of entry has been changed from Castle Garden to Ellis Island, up to the time of the breaking out of the European War, the position of the gates had not changed. They have been coming, these foreign people, to our shores at the rate of a million a year and they have been flocking to our factories and our mills. In order to be intelligent workmen, they must understand the English language. And in order that they may know the opinions and traditions of our nation, they must know the English language.

The President — The gentleman's time has expired.

Mr. Beach — I vote Aye.

Mr. Tierney — Mr. President — Mr. Bernstein is obliged to be in New York this morning. Mr. Bernstein and I will pair, and Mr. Bernstein will vote No, and I will vote Aye.

Mr. C. H. Young — Mr. President, under our rules there are no such things as pairs.

The President — There are no such things as pairs under any

rules with which the Chair is familiar. A pair is a personal matter and the statement of it is in effect the giving of a personal reason for not voting.

Mr. C. H. Young — Mr. President —

The President — The gentleman will let the Chair complete —

Mr. C. H. Young — I beg your pardon.

The President — The statement of that reason for not voting is addressed only to the question of whether the member making the statement shall be compelled to vote. It is competent for the body in which the question arises to compel the member to vote, but the question can be raised in no other way.

When Mr. Clearwater's name was called he said — Mr. President, I advocated this amendment because I thought it was right. I think it is high time that we write this principle into our organic law. All the illustrations, parallels and comparisons that have been cited against it relate to the infancy of this commonwealth and of this republic. A great advocate of Mr. Marshall's race said in his letter to the Church at Corinth: "When I was a child I spoke as a child, but when I became a man I put away childish things." Not only do I regard this amendment as right, but expedient. It will summon to the support of this Constitution thousands of voters whose interest otherwise would be languid. Let me say to this Convention what Abraham Lincoln said in his great debate with Judge Douglas in the quotation from Tacitus: "Danger lies in the absence of courage, never in the possession of it." I vote Aye.

When Mr. Donovan's name was called he said — Mr. President, I wish to explain my vote, for the purpose of stating a historical fact. Mr. Bell said here the other day that the Anglo-Saxon race settled the country. I concede that they did. They settled it, fixed the stage and arranged everything for the Irish to come and take possession. And they have had it ever since. No man can say that the Irish immigrants who came here in the '40s and '50s did not vote intelligently. They immediately became your governing class and they remain so to-day. I remember as a boy in the Second District of New York, which is being represented here by Mr. Smith, that the only language spoken was Irish, and the citizen that did not understand the meaning of "thig inthu" had better get out. The personnel of that district has changed considerably since those days. It is composed of Greeks, Italians and what not, but still a handful of Irishmen run it to-day. The Democratic vote every year is eight thousand. No, the fact that a man cannot read and write English does not necessarily imply that he cannot vote intelligently. Mr. President, I withdraw my request and vote No.

When Mr. Doughty's name was called he said — Mr. President I wish also to explain my vote. I believe there is one defect in this proposition which may not have been noticed, and that is this: The claim of its sponsor is that it will not injure any one because it is postponed for two years. It will unavoidably injure those whose applications for citizenship are now pending. I understand that it requires five years to become a citizen. Those who have made their applications and filed their first papers will be affected by this proposition. I think that is a defect which should compel any one to vote against the amendment. Furthermore, I believe that the States should not add to the qualifications of voters additional qualifications that the United States does not require until it shall be apparent, beyond any possible doubt, that there is some urgent need to correct an evil. There has been no one in this chamber who has shown to my satisfaction that there is a single item of urgent necessity for the passage of this amendment. I believe that it is the reformation or rather the desire for the reformation that is bringing on this change rather than the need of it, following thereby the principle which has been laid down by Lord Francis Bacon in one of his essays. He says: "It is well to beware that it be the reformation or rather the desire for the reformation that is bringing on this pretendeth the reformation." I vote No.

When Mr. Eisner's name was called he said — Mr. President, I desire to be excused from voting and briefly wish to state my reasons. I presume, Mr. President, that I am one of those younger members of this Convention who were earnestly exhorted by Judge Clearwater to assert their courage when they come to vote upon this question. Mr. President, since this matter came before the Convention I have devoted considerable thought as to just how I should vote upon it, as to just how I could vote conscientiously upon it. I voted for the amendment which Mr. Marshall offered, an amendment requiring literacy in any language as a prerequisite for the franchise. I know men who can read and write a dozen languages that would be hardly qualified to vote intelligently upon this very constitution that we are going to submit to the voters this fall. The ability to read and write is by no means an index of a man's intelligence, and it is the question of intelligence which is most important when it comes to the matter of the franchise. If you are going to impose upon the voter any kind of a test whatsoever, let that test be his intelligence to vote his ballot correctly. There are many men in this country to-day who can only speak and write in German or in Yiddish or in some other language, who are better qualified to vote on Election Day than some of those who are masters of the

English language and literature. I believe this amendment is only another piece of reaction among many reactionary propositions that have been proposed before this Convention; and for that reason, for the reason that it is not a true test, not an honest test, not the kind of a test which will bring forth the best from among our citizenship, I desire to withdraw my request and vote No.

When Mr. Green's name was called he said — Mr. President, I happen to know American-born citizens of excellent character and splendid habits, as broad business men as I know anywhere, who can neither read nor write. They are well informed, their children can read and write. Many of them have college graduates in the family, who, if you please, can inform them of the current topics of the day. I find that these men are strong, able business men. They regret the unfortunate circumstances in which they are placed, but for some reason they don't go into the question of education for themselves, but they have given their children splendid educations. I know in my own city of Binghamton we have a large foreign population of various kinds and I know that those children, those parents are urging their children for all they are worth to go through our great common schools and become educated in the ways of this country, and they, too, as parents of those children, are doing their best along this line. You and I know, fellow delegates, that there are hundreds and thousands of human derelicts who are allowed the vote and who would not be shut off by action of this kind and a very small percentage of voters that would not pass the literacy test proposed here. If this test breeds character, it would be a different thing, but, as suggested yesterday, the prisons are filled with men highly educated, a very small proportion, as shown, are of the uneducated variety. I cannot feel that it is right to rebuke the progress of this country and the ideals of our fathers who have brought down to us such a splendid record of prophecy and of fact. I am glad to vote No on this proposition.

When Mr. Griffin's name was called he said — Mr. President I beg to be excused long enough to explain my reasons. To hear the talk in this Convention you would imagine that this proposition was directed against immigration of aliens to this country, or in some way intended to lessen the number of those who are entitled to the franchise. If this amendment would prevent a single citizen from exercising the franchise which he already held, I would vote emphatically against it. To me its purpose seems a most laudable one, namely, to make the suffrage worth while. It simply requires new voters, after January 1st, 1918, to familiarize themselves with the language of the country in whose government they desire to participate. That is certainly not expecting

too much and in view of the transcendent sacrifice of blood and treasure which our ancestors have made for the principle of the suffrage, I think it is asking very little. It does not touch or impair the right of a single voter who either now, heretofore or hereafter may be upon the registration lists of his State. All that it does is to prevent that list from being enlarged after the first of January, 1918, with the addition of illiterates. It then adds a new condition to the exercise of the franchise by new voters, but that is not unfair or unreasonable. It is not asserted that education is a panacea for all political ills but it is quite evident that you have a better chance to cure political ills if you can secure an intelligent constituency, able to read the prescription and the directions upon your franchise package. The whole fabric of our present political structure depends upon intelligent and literate constituency. Our primary laws are all in vain unless we have a citizenship able to inform itself of the issues of the day through the medium of the English language and not be dependent for election information upon literature published in a foreign tongue. We have reached the point in this country where we must begin to conserve our national character. We have recently dwelt upon the conservation of our natural resources. Let us not close our eyes to the necessity of the conservation of our national resources and one of the greatest of these is the unity of our people.

The President — The gentleman's time has expired.

Mr. Griffin — It is for this reason, Mr. President, that I believe this amendment will promote the unity of our people, that I desire to be recorded in the affirmative.

When Mr. Heaton's name was called he said — Mr. President, I desire to explain my vote. By adopting this amendment we take away no grand and glorious privilege which we ought to give to the young men of this age who cannot read or who will not learn to read, for when such a young man attempts to exercise this privilege he does not exercise it himself, but the man exercises it who does the mechanical act of marking his ballot for him. For a ballot so cast must be founded wholly in trust and not in knowledge. I favor this amendment because it takes away from the ward heeler and the active politician the control of 6 per cent of the total vote, and with that much gone, I regret to say that the ward heeler has sufficient upon which to do business left. Until we are ready to print the ballot in the language of the voter I favor requiring the voter to be able to read the language of the ballot. I vote Aye.

When Mr. Latson's name was called he said — Mr. President, I desire to explain my vote. It seems to me there is one phase of this situation which has not found expression, and I may say

at the outset that my mind has been swayed very greatly as I listened. It is not sufficient that one should have lived in this country for so many years, or that one should have attained a certain degree of intelligence or even that he should have attained a certain degree of judgment. The test, it seems to me, should rather be whether one has assimilated with our institutions and with our people. When I listened to Delegate Marshall tell us of the newspapers published in foreign language, and their great circulation, I regretted the necessity for such a condition of affairs. I regret to see anything in the nature of a transplanting of a foreign colony within our circle. Now we are doing a great work to overcome this in our public schools. The Department of Education is giving to the young all that enables them to go to their homes and so assist their elders in assimilating American institutions. In our evening schools thousands upon thousands of the elder brothers and sisters as well as the parents are being taught the English language and somewhat of our institutions, that this process of assimilation may proceed yet further. While I recognize in this proposition an effort to supplement the great work of our Department of Education, yet, Mr. President, my mind sways in considering whether it is expedient and proper for us to introduce into the work in which we are engaged an issue somewhat aside from the real purpose that has brought us here, and being greatly in sympathy with the measure, having voted for it in the Committee of the Whole, upon mature reflection I feel that we are stepping aside from the real work that has brought us to this Convention, and I have so much regard for the work that we have done that I hesitate to do anything that might to any extent divert the attention of our people from the more important accomplishments and thus jeopardize the opportunity to bring about the great reforms with reference to which we are engaged. For these reasons, Mr. President, I vote No.

When Mr. Leggett's name was called he said — Mr. President, I desire to explain my vote. When this measure was first introduced, up to the time it came up before discussion, I had not been able to regard it as of very much importance. It seemed to me that the effect of it was so slight and so slow that it was certainly not of primary importance and I had not made up my mind how I should vote until the debate had commenced and had gone on at some length and in fact I had not concluded one way or the other until I heard the learned constitution expounder from New York, Mr. Marshall, and his earnest argument determined me to vote as I do now. Aye.

When Mr. Mann's name was called he said — Mr. President, I desire to be excused from voting, and offer as my reason the

following: When this discussion first came up I already stated that irrelevant matter, immaterial matter was interjected into the discussion, which was foreign to the issue. It is like they say in court, it might have been some collateral matter, and since they opened the door to the collateral matter I had a right to reply, and to reply in a manner which I believed at the time was justified. If it were not for the reasons given by the advocates of this measure I feel that I would agree with their point of view, but their reasons changed the aspect of things. As a matter of fact, it is just like the judge who rendered a decision and then gave his reasons for rendering his decision, and the Appellate Court said if it had not been for the reasons given we should have sustained the verdict. Under those circumstances I feel that these reasons that have been advocated, particularly that one which says that those people who do not read, or, rather, who read foreign printed papers, are a menace to this country, I on the other hand feel that they are not a menace to the country, but rather the true patriots of the country who are trying to prevent the jingoes and others who are not so patriotic from involving this country in difficulties with a foreign nation. For that reason I ask to be excused from voting entirely on the matter, since it is a matter of indifference to me whether or not we have the literacy test, and if the Convention will concur with my request I will be glad to be excused from voting entirely on the matter.

Mr. Quigg — Mr. President, I do not think that Mr. Mann ought to be excused on the ground that somebody might misunderstand his vote.

The President — The question of excuse cannot properly be considered until the determination of the roll call. It will then come up.

Mr. Mann — Mr. President, I will withdraw my request and vote No.

When Mr. Mereness' name was called he said — Mr. President, Abraham Lincoln made the further observation that you can fool all the people part of the time or part of the people all of the time, but you cannot fool all the people all the time. Having that in mind, I think it is safer to trust all of the people in the State of New York as they have been trusted until we have attained the dignity of the greatest State in the Union with eleven millions and more. I am not in favor at this time of placing any restrictions upon the suffrage based simply upon the question of the ability of the citizen to read or write the English language. Therefore, I vote No.

When Mr. Delancy Nicoll's name was called he said — Mr. President, I desire to explain my vote. Whatever be the rule in

other States of the Union, it has never been the policy of the State of New York to try to reduce illiteracy by confining the suffrage to those who can read and write. We seek — we try to reach the ideal to which we all aspire by a broad and generous educational policy, such as now exists in the city of New York, where we have spent no less than six hundred millions of dollars in twenty years on education alone, rather than by patriotic, but ineffective, declarations in the organic law. I, therefore, vote No.

When Mr. J. L. O'Brian's name was called he said — Mr. President, all matters which come before this Convention are not of the same relative importance. If this measure were a measure which would intensify the sense of civic responsibility, I should feel differently toward it than I do. The peril to government, as I have seen it in my own practical experience, is the indifference of the voter, and my experience has taught me that that peril exists to a far greater degree among the men with whom I associate than among the men you call the illiterate voters. For that reason I regard this question before this Convention as one of minor importance compared with certain great constructive measures which are before the Convention, on which the people's opinion has crystalized already to a large extent, and for which there is a widespread demand. There is a distinction, gentlemen, between expediency and statesmanship, and viewing the matter from my own experience with the illiterate voter, I see no such peril to the State as would require this Convention to depart from its large constructive measures and take up this measure; and on the other hand, I do see that the adoption of this measure would tend to confuse the issues presented by this Constitution, not only in the minds of the so-called illiterate voter, but in the minds of the foreign-born voters generally in this State. I therefore withdraw my request, Mr. President, and vote No.

When Mr. Quigg's name was called he said — Mr. President, the ill conditions that this amendment seeks to improve are improving themselves just as rapidly as is possible. It will be impossible to "jockey" that improvement by the passage of any such amendment as this. The advantages that the amendment seeks are coming all the time and as rapidly as possible and they cannot be gotten here any sooner. I want to see this Constitution placed before the people with every possible chance of success. I do not mean that to pass this amendment would knock it out but I want to see every opportunity given to it to succeed with the people. Seeing, then, that no advantage is going to be gained by this amendment that is not coming to us as fast as is possible, I vote No.

When Mr. Reeves' name was called he said — Mr. President, I wish to explain my vote briefly. In my judgment, this proposed

amendment is not only unjust and distinctly un-American but, *a fortiori,* if I may use the word, it is "anti-New York." It strikes at the fundamental principles of our government and especially at its fundamental ideal, which is to induce all men to stand in an equal position. People of New York do not want an aristocracy of so-called culture any more than they want an aristocracy of wealth or of blood, and this would be an opening wedge to an aristocracy of culture. It is for the Education Department of the State to take care of the question that is involved here, and it has been doing so, is doing so, and will continue to do so. The vast hordes of people, literate and illiterate, who come up the bay and become our citizens have their rights here; they have come here to help make us great and New York has known how to take care of them and will continue to do so. Those of us who have worked side by side with the laboring men, where we find illiteracy, and have seen how many of them cannot read and write, and yet had the best judgment and the best idea of their fellows, know that this test ought not to be. I want to say one word further, namely, that the putting off of the time to 1918 is a delusion and a snare. Don't forget that that time is coming and don't forget that it is the man who cannot read and write who will know last that it is coming. The second generation of these people is the best of the people that we have and the men who are engaged in our public schools and our colleges and places of education can testify unqualifiedly to that fact. Let us lead these men on and let this second generation be the educated people. Let the ones who have the judgment, though they cannot read and write our language, be equal with the rest of us. Mr. President, I vote No.

When Mr. Sargent's name was called he said — I would like to explain my vote. If there be any evil which results from our present system of voting, it is not due, in my opinion, to this so-called illiteracy. It is rather due to the fact that there is great indifference on the part of those who are literate, in the matter of voting. We can take the vote in a presidential year, and in a succeeding year, and we will find a great difference in the number of votes cast. This is due to the fact that the so-called literate voter is indifferent to his duties. I brought here a proposal to make voting compulsory. In my opinion the matter of voting is a duty and not a privilege. If all those who are literate would vote we would get better results from voting. As I said, illiteracy is not the evil. Indifference is. We do not remedy anything by the approval of this proposal. Therefore, I vote No.

When Mr. Steinbrink's name was called he said — To my mind this is purely an American question, and considerations of race or

creed have no place in its discussion. We have been sent here to prepare a Constitution for the 11,000,000 of people in this State and what is best for them must necessarily be best for those who will live here for the next twenty years. If this proposal denied to any man, who now enjoys the privilege of voting, the continuance of that privilege, I should unreservedly oppose it. The Court of Appeals, not many years ago, held that in a village election the requirement of a property right to vote was not unconstitutional, neither was it unreasonable under the circumstances presented in that case. How, then, can it be urged that this requirement is in any sense either unreasonable or unfair? To those who are approaching the time when they may vote, this proposal gives two years in which they may learn to read and write English. At present, the immigrant must live in this country for five years before he becomes a citizen. We exact from him obedience to the law of the land. Is it unreasonable to expect from him that in that period he will acquaint himself with the language of the land sufficiently to enjoy the privilege of voting? To me Mr. Barnes' analysis of this question was sound and I have not heard his argument answered. Like Mr. Marshall, there is no Anglo-Saxon blood in me. My ancestors all came from Western Germany and my natural inclination would lead me to oppose this proposal. I am here to use my head and not my heart, not as representing myself, but as representing the constituency that sent me here. It is my belief that that constituency would favor this proposal, and since, added to that, my analysis convinces me that it is sound — I favor it. When it is made clear, that no man now possessing the vote will be deprived of it by reason of this proposal, the criticism which has here developed will vanish. I do not believe that the German, the French, the Italian or the Yiddish papers will oppose the Constitution because this is embodied in it. They, too, are American, and since they preach American ideals, I am satisfied that they will practice them, and will recognize in this proposal the method by which the voters of this State will represent a great unified body, unified in thought and in action, striving for true American ideals. I vote Aye.

When Mr. Tanner's name was called he said — I ask leave to explain my vote. I find myself in concurrence with the reasons stated by Mr. Delancy Nicoll and Mr. Quigg. Some few years ago when I was the Deputy Attorney-General in charge of Greater New York, it became my duty to prosecute election frauds, and I think it is worth while drawing to the attention of the delegates assembled in this Convention, that in that experience I never knew a man who was either accused or convicted of

false registration who could not read or write. I therefore vote, No.

When Mr. Unger's name was called he said — Mr. President, my colleague, Mr. Newburger, has expressed himself to me very strongly as to his position on this measure, and he was unavoidably called away. He asked me to state to the Convention that if he were here he would have voted against it. I, myself, desire to be recorded against it.

When Mr. Westwood's name was called he said — If we adopt the plan to require voters to be able to read English, our action will make more votes for the revised Constitution than anything we have passed. Experience in the western part of the State shows that the naturalized people of Italian birth in Chautauqua county are enthusiastic citizens. They are never called Italian-Americans. They are always Americans. Old and young alike, they are active in their study of our language and our customs. The pride of a race, as old as the era, is one of their recognized characteristics, and this pride will lead them to vote to require themselves, others of their race, and those of other races, to take this step toward full Americanism. I vote Yes.

When Mr. C. H. Young's name was called he said — Mr. President, I desire to express, as far as I can, in explaining my vote, my appreciation to a majority of the Republicans who yesterday voted to sustain my contention. I vote Aye.

When Mr. Harawitz's name was called he said — I desire to explain my vote, Mr. President. Coming as I do, from that section of Greater New York which is practically termed the melting pot of all the citizens who come to this country, I would feel derelict in my duty to that constituency if I did not say a few words against this measure. The introducer of this bill gave argument last night and devoted a great deal of time concerning the patriotism that would be instilled into the citizenship of this country, or the State, by the adoption of this measure. I want to say to the delegates here assembled that from my observation of the people who live down there, most of whom are foreign-born citizens, that there is no greater patriotism anywhere in this country than there is on that great East side. I want to say to the delegates that there in the synagogues and in the churches of the members of the different races the flags of their country and of their homes are mingled with the American flag at all times, and on all occasions, and there is no question of patriotism involved at all. It has been said on the floor of Congress only a few years ago that these people, coming as they do from the oppressed countries, who made their homes in this section of the city of New York, have by dint of industry and

hard work added to the great citizenship of this State. I am strongly opposed to any measure which will curtail the right of citizenship simply because a man cannot read or write the English language. I know people who can read and write German, French and Italian, who are probably more educated and who probably understand our American institution much more readily than some of our citizens born in this country. I know from my experience in the naturalization bureau of the city of New York that there is a literacy test when a man is sworn in as a citizen. Whether it be in the English language or not I don't know explicitly, but I think it is, and I think under the rules now, before a man is allowed to obtain the citizenship papers he must read the English language. For these reasons, Mr. President, and for the reasons that I believe that the curtailment of this right at this time would deprive this country and this State of many good citizens, I withdraw my request and vote No.

The President — Is there any objection to granting the request to be excused from voting made by Mr. Tierney The Chair hears no objection and by unanimous consent the excuse based upon his statement of a pair is granted.

The President — Upon the question of agreeing to the report of the Committee of the Whole, the Ayes are 67 and the Noes are 77, so the Convention refuses to agree with the report.

Special orders.

Mr. A. E. Smith — I would ask that the Record show that Senator John F. Ahearn, a delegate to this Convention, was called away yesterday to attend the funeral of a relative and he desired to have me say that he regretted his absence exceedingly, and that, had he been here, he would have voted against the bill providing for the literacy test.

The President — Is there objection to the entry of that fact in the Record? The Chair hears none and it is so ordered.

Mr. J. S. Phillips — I now call up the motion which I made earlier this morning, that is, to reconsider the vote by which the report of the Committee on Rules as amended was adopted last night.

The President — The motion to reconsider the vote by which the report of the Committee on Rules was adopted last evening is now before the Convention. Are there any remarks?

Mr. Brackett — I have sat, Mr. President, in a legislative body day after day, where hourly reminding myself of Paul who said he had fought with beasts at Ephesus, I fought as best I could with the beasts of Tammany Hall. Over and over again the steam roller of the majority, directed by a very few of the body,

rolled over me. I need not say to you, Mr. President, that I felt flat, because it was a heavy roller, and it seemed as though I was always in the way when it started. I have sat in a body where the "Old Guard" constituted the steering committee, and whenever the fire was lighted by the majority of that committee it was just as merciless and the roller was just as heavy, and the persons who got in the way of it were just as flat as were those who got in the way of Tammany Hall. But I want to say to you, Mr. President, that in all the years I bear a willing tribute both to Tammany Hall and to the Platt machine in that particular, that they were polite, they were gentlemanly, they were courteous, they were kind; there was never any attempt to discommode people. There was always a reasonable show of fair play or else there was some excuse for withholding it, some excuse that had some measure of plausibility. And the few times in all the years that we were able to pick out a defeat and tip over the roller, they always accepted the defeat like good sports, they always acknowledged and accepted it. So far as my observation goes, it is reserved for a Constitutional Convention of the State of New York to attempt to reverse the rule which has thus prevailed without exception in the legislative bodies of the State, a Convention in which it has been continually dinned into our ears that there must be no politics and no alliances but that everybody must stand upon his two feet, four-square with all the world, and do just what was thought right. And when, on a miserable question of whether or not a bill should be considered to-day or next Monday, the steam roller was un-steam-rollered by a small majority, instead of accepting it like men, the attempt now is made to discommode people in their engagements; the attempt is made to attempt to force at once a debate in this House upon a bill which never until this morning was on the files of members and of which they never have heard a word. It is on the files — not on the files of the calendar of the day, but on the general files, among the last ones. It was not here yesterday, so that I assume it was put on after we adjourned last night or this morning. Now, if that is regarded as worthy of the steering machine of a Constitutional Convention then it reverses all the traditions that I have referred to or that I know of in a deliberative body. Far and away in the judgment of some us — you get them away here and there by allowing all the patronage to remain with this man and to give to that man something else — there are not quite as many as there were a few days ago and maybe if you hold them until Monday night there will be fewer, because, of course, the folks who distribute the patronage have the *quid pro quo* to get support for what they want. Far and away the most serious

question presented, or to be presented, to the Convention is this one of the short ballot. I want to say that if I were the steering committee here and had the utmost anxiety about a question of this importance, which, as I say, some of us believe is one of the most importance, the one which will determine whether New York is to turn its face away from republican government towards Cossack government — on a question of that importance I should want to have the appearance of at least giving the opposition a pretty fair show in debate. I want to submit it to the sense of fairness of members of this Convention. There is not a one of us who has had an opportunity to read that bill unless it is those on the Committee which has reported it. We are asked to go into a discussion to-day of this most important of measures without ever having thus far had the opportunity to see it, and we are asked to do so at a time when we are in session here practically all of the time. Now, will you tell me what intelligent consideration of this measure can be given by any of us aside from the members of the Committee which has framed the bill? Is it giving a fair show to the men who are opposed to it, who have not seen it and have had no opportunity to see it? I appeal to the fairness of those who are going to support the bill, that we be given a proper opportunity to examine the provisions of the measure which is on our files in order that intelligent debate may be had on the subject.

Mr. Tanner — Mr. President, I very much appreciate the courtesy of Mr. Phillips in moving to reconsider the action of last evening because of personal convenience to myself. I don't want this question decided on a matter of personal convenience to me, and I don't believe that it ought to be decided on a question of personal convenience to anyone else. If we are to conclude our deliberations so they will be ready for the Committee on Revision by September 4th, we cannot afford to pass a resolution which virtually is an invitation on Friday, on Saturday and on Monday for the delegates to return to their homes. A resolution to defer this matter until Monday night means that it would be reached Tuesday. That gives Tuesday, Wednesday, Thursday and Friday to the debate of this and practically all of the calendar. September 4th, a week from Monday, is a holiday. And that means the delegates over that time will be gone. What we should do, and I agree with Senator Brackett, is to have a fair debate after the merits of this bill with its amendments are before this Committee. Now, the bill reported out originally by the Committee on Governor and Other State Officers was on our files on August the 11th, and it has been there ever since. And the only important respect in which it has been amended relates to the finance department.

Mr. Quigg — Without getting to that point, can you tell us how much time we will have? Suppose we all agree to take it up when it comes and stay Friday and Saturday; now, when have we got to vote? How long a time can we have? Has that been considered

Mr. Tanner — I think it has been considered. I think I can answer that in a moment, Mr. Quigg. The only important respect in which the bill has been amended, excepting as to order of presentation in debate, refers to this section relating to the finances of the State, and the opposition to the bill reported by the Committee on Governor and Other State Officers last week drew up and had printed an amendment, which I think was very largely in the hands of Mr. Ray Smith and Mr. Wiggins for preparation, proposing certain amendments to the question of organization. They provide that we shall not take the division of finance as originally reported in our bill, but split that up into a department of finance, the head of which will be the Comptroller; the department of the treasury, the head of which will be the Treasurer; a department of accounting, the head of which will be the commissioner of accounts; and the department of taxation. Now, that bill is the same bill that is represented by the amendment which was proposed last night in our Committee. And the question which Senator Brackett should address himself to is, are you ready to consider the bill which was reported on August 11th, plus the amendment which you gentlemen printed yourselves last week. That is the only respect in which you will have to make up your minds. Are you ready to make it up on your own bill? Now, the question, Mr. President, of whether we are going to have elective or appointive officers has been pretty thoroughly thrashed out, and the Committee report in respect to that still limits the number of elective officers to the Attorney-General and Comptroller. Now, my own personal wish in this matter is that we will have a fair opportunity for debate. You gentlemen, know what the questions at issue are. You have two bills before you, and the bill prepared by Mr. Ray Smith in a great many respects pays the supreme compliment of imitation to our bill. And the only respects where we are not within reasonable distance of each other is on the question of how many officers shall be elective and how many shall be appointive. The reorganization scheme is virtually conceded by the bill proposed by the other side. And I therefore think that, in order — as we only have a short time in which to debate this and other measures before the House, that the debate can be opened — that the question which is the first in order and perhaps in importance, of the reorganization of the departments,

should be passed on, and the question of whether we shall elect this man, or elect that man, or appoint the third man, can be taken upon Monday. There is no disposition to push this bill. Last night I did not even support by word the Committee on Rules. But you have before you, gentlemen, exactly the propositions which shall be debated, and if you delay the opening of this debate until Monday night or Tuesday, you are going to crown this bill and other bills so that you won't get your work done.

Mr. Olcott — For one, I very gladly accede to the proposition now made, for the reasons that Mr. Tanner mentions, as I believe the important part of the vote will thus go over until next week, and, if the Convention will permit it, I want to make a brief personal statement. If I had had the slightest idea that Mr. O'Brien's reasons for his proposed rule last night rested upon Mr. Tanner's health, I would have made every sacrifice of my own interest in order to meet the situation. I did know that Mr. Tanner was not in the very best of health but I did not know that he expected any suspension of his activities prior to the close of the deliberations of the Convention.

Mr. Wickersham — May I call the attention of the House to the fact that we still have one number on the calendar of special orders that we have been dealing with and that there are set down, under the rule adopted last evening, three more proposed amendments to be discussed as special orders before we get to this proposal of the Committee on Governor and Other State Officers, so that there seems to be no possibility of reaching that order until some time to-morrow. It is now nearly twelve o'clock. Therefore, we shall not open the debate on that subject until, in all probability, some time to-morrow morning.

Mr. J. L. O'Brian — Mr. President, may I say a word in reply to the statement of the delegate from Saratoga? The only desire of the Rules Committee was to promote the convenience of the members of this House for the simple reason that, if debate can be opened on this measure offered by the Committee on Governor and Other State Officers on Friday and continued on Saturday, there is every reason to believe that the entire work of this Convention can be completed by the following Saturday night. If the debate is postponed until the first of the week on this bill so that it is not under debate at all until Monday night as suggested by the amendment offered by Mr. Wiggins, there is almost complete certainty that the Convention will have to sit an additional week in order to complete its business. I am not going to reply to the comments made on the action of the Rules Committee by the gentleman from Saratoga. You gentlemen have a sense of humor, I trust, and I know that you all have a sense of fair play. The

overture presented to you by the Rules Committee was simply in the interest of reasonable expedition by taking up this measure and discussing it. Last night I was unable to give any statement as to the management of this bill, because I had nothing to do with it, but now that Mr. Tanner has stated that the short ballot part of the bill will not be taken up and voted on until Monday, I believe that the House will see the fairness of the position of the Rules Committee, and, in view of the condition of the health of the Chairman of that committee, will reverse its action and permit us to proceed with this order of business when reached.

Mr. J. G. Saxe — I just want to say one word and that is this: If we proceed with this amendment on Friday and Saturday, under the rule we will have to take it up section by section and we undoubtedly will come to a vote on the earlier section Friday or certainly on Saturday, so that suggestion that the real vote would go over until Monday night does not appear to me to have any weight. I make this suggestion, not in opposition to the rule but so that the delegates will understand that we cannot have any agreement of that kind. If the bill is to come up on Friday and Saturday, virtually, we must arrange to be here on Friday and Saturday.

Mr. Parsons — Does he not appreciate that the rule of the Convention provides that the amendments must be taken up section by section and specifically says it shall do so unless it orders otherwise?

Mr. J. G. Saxe — Oh, yes, undoubtedly the rule could be changed in that way, but when you have got a long bill you could not make any progress with a number of amendments being urged to specific sections unless you vote section by section. It seems to me if you are going to proceed on Friday and Saturday and take any advantage of those two days, we have got to proceed under the regular rule and we ought to have a full house.

Mr. Wickersham — Will the gentleman yield for a question? Does not the gentleman think that it is the duty of the members of this House to be here on Friday and Saturday?

Mr. J. G. Saxe — Absolutely.

Mr. Wickersham — Then why does the gentleman suggest any peculiar hardship in the delegates performing their duty?

Mr. J. G. Saxe — I am not suggesting any hardship, Mr. President. I have been here myself four out of the last five Saturdays since the majority leader gave notice five weeks ago that we were going to do work on Saturday. In those four out of five Saturdays we have done only one day's work.

Mr. Quigg — Debate on the great bills that have been before the Convention has been so tolerant and fair, such perfect opportunity has been afforded all of us to make our arguments and

present our amendments, that it does seem to me that we can well afford to trust the Committee on Rules in this respect to give us a good opportunity when it comes to the vote. Now there is a serious danger that Mr. Saxe has pointed out. If members do go home and leave us without a quorum to-morrow or Saturday, and we are called upon to vote and to progress things without a quorum, then it imposes on those of us who are left a very disagreeable duty, either of raising the point of no quorum or letting things go through to which we may be opposed, without a quorum, and those in favor of them get the advantage of a small vote. Then when the members come back on Monday they are asked to put it through. So I join in Mr. Saxe's urgency upon the Convention that we do make this sacrifice to-morrow; first, that we let the Committee on Rules have its way — which seems to me a reasonable thing, as in all other debates we have been fairly treated; and, second, that we do make the sacrifice of coming here to-morrow and Saturday so that we may get through with this with a quorum present and have a responsible vote.

The President — Gentlemen of the Convention, will you permit an observation from the Chair? The Committee on Rules made its report proposing an addition to the list of special orders upon the assumption that on this, which ought to be the last Saturday and Monday of the sessions of this Convention, the members of the Convention would all cheerfully comply with the order which the Convention has adopted, comply with their oaths of office and make such sacrifice of convenience as may be required to remain here and perform their duties. The Chair does not enter upon the debate, but he feels it his duty to make a solemn protest against regulating the affairs of this Convention with a view to members of the Convention refusing to perform their duty under the orders of the Convention. The suggestion has been made that the Convention might have to sit another week. The Chair begs to say that if the Convention has to sit another week beyond the time that has been contemplated to finish its labors, its labors will not be finished. The time has come when, in accordance with the custom of all legislative bodies in the closing hours of their session, all other engagements are laid aside and the members of the body remain to devote themselves exclusively to the conclusion of the work. If we are to assume that the members of the Convention do not propose to remain here and perform their duties it is clear that no important measure ought to be acted upon. But it rests with the Convention whether they will regulate their conduct upon that assumption.

Mr. Brackett — Mr. President, if there is in the remarks of the President any imputation that those who want to postpone this debate are opposed to doing their duty —

The President — The Chair will say there was no such thought in his mind and there was no such imputation in what he said.

Mr. Brackett — I was about to say, Mr. President, if there was any such imputation I want to disclaim it. I presume that those who are opposed to this measure and who want to debate it are here just as much at their inconvenience as are those who are in favor of it, and are as anxious to get through with it, and propose to devote themselves just as thoroughly to the arrangements as those virtuous ones who are on the other side, in favor of the measure. But say what you may, say what you can, there will be some who will not be here on Saturdays, who will be here other days, and I cannot help having a little suspicion when I see by the arrangement of the program that it was the intention of some of the members of the Committee on Rules — I don't say all of them, of course — to rather have this discussion take place on Saturday and permit other much less important work of the Convention to be done next week. Now, I would like to know, Mr. President, why the Rules Committee could not have done this with perfect propriety. As my honored leader has suggested, there are certain general order bills which will take until to-morrow. We have not been in the order of third reading for several days. There is an accumulation of matter there; the Committee on Revision having reported several times since we have had that gathering. To-morrow, I am very certain there will be reported an important amendment proposed to Article III, the organiaztion of the Legislature. All of these can be closed up; they must be closed some time; it is not a question of wasting to-morrow or next day, but the question whether we will take up some minor matters to-morrow and next day and start in fresh Monday. I will meet in this Convention at seven o'clock — I am used to starting in early in the day, and I will match the President or anybody else in that and will start in as early as you please on Monday and thresh it through. But why there should be any wish to put an important matter on in what must be confessed to be a somewhat slim day, and put the minor matters over until next week, I cannot understand. I can only say that if we must, thus unprepared and without opportunity to see the measure, go into the debate, I shall have to, for one — I hate to, because I want to be as tolerant of the comfort of my associates as I can be, but, every hour of the day if necessary I shall move a call of the House and the members must make their arrangements accordingly, or the sergeant-at-arms will get them if they don't watch out; because it must be debated before a full house and everybody ought to be here and not run the risk of being arrested and haled before the bar of the house, a thing which has not yet happened in this Convention. And

we have ample work to occupy us until the close of Saturday and can take up this matter on Monday morning, after the Lord's day in which to study it and learn of it, and then take it up and act upon it next week.

Mr. J. S. Phillips — Mr. President, with the assurance made by the chairman of the committee having this proposal in charge that the vote upon the important question whether or not certain officers are to be elected or appointed, shall be deferred until Monday night, it seems to me that we can safely go on with the debate, for after all, as a gentleman has stated, it is apparent that that is the main question at issue. Upon the question of the reorganization, if the bill or the proposal presented by Mr. R. B. Smith is the attitude of those in opposition, there is not very much difference as far as the reorganization of the departments is concerned, and the main question at issue is whether or not those officers should be elective or appointive and upon that we have the assurance of the chairman of the committee that the vote will not be taken until Monday. With that assurance I think we may be perfectly willing to accept the statement of the chairman, and it seems to me we should go on and not impede the progress of the work of the Convention, so that we can complete the work by one week from Saturday. I trust that this motion will prevail.

The President — The question is on the motion made by Mr. Phillips.

Mr. Tanner — I think we should have a perfect understanding, Mr. President, on the question raised by Mr. Phillips. The form in which the bill is now presented will require a vote section by section. For instance, the section as to attorney-general provides that he shall be the head of the department of justice and shall be elected for the same term as the Governor. It will be necessary, if a vote is taken at all, to vote on this section by section, under the rule. I am willing to make any reasonable stipulation that in voting on the sections it shall be understood that a motion for the reconsideration shall be in order on Monday night, of a vote on any section where the opponents of the bill as to election wish to have it reconsidered. That substantially means that we are voting on the plan as offered which includes the reorganization, and if you wish to reconsider the vote as to whether this man or that man shall be elected or appointed, I certainly shall make no objection. I wish again to state before the House my very firm conviction that there are two questions to be decided, first, the question of reorganization: it is in natural, logical departments. And then the question comes up, after you have determined that question, which one of these shall be elective and which one appointive? Relevant to the second question, I shall interpose no

objection on Monday night to move to reconsider the question of election or appointment as related to any section where we have passed on the bill on Friday or Saturday if we get to a vote.

Mr. Cullinan — Why can't we pass right along and defer voting on the election or appointment until Monday night?

Mr. Wadsworth — Mr. Tanner, how would this suggestion meet your views? That general debate be had on Friday or Saturday of the amendments offered but no votes taken until Monday at 10 a. m., when the bill shall be taken up section by section and voted upon.

Mr. Tanner — Well, it seems to me we are making two bites of a cherry on that. The question is to pass upon the bill and then move to reconsider the question of whether the head of such departments shall be elective or appointive, the departments themselves, if the formation agreed to on Friday or Saturday shall not be disturbed by such motion.

Mr. J. G. Saxe — Mr. President, I think what I said before was misunderstood. I agree with the President, and with the majority of the Committee on Rules at this time. I think we ought to go on now in the regular way and take this up in the regular order on Friday or Saturday. In order to do so, and in an orderly manner, we have to have a full house. If we make stipulations, it means that we cannot proceed in an orderly manner on Friday and Saturday because we have to set things aside, even a motion to reconsider, which Chairman Tanner has suggested. If we bring the men back with their fresh blood on Monday there is added delay and if we are to go ahead with the Committee on Rules, as I for one am willing to do, I think we ought to go ahead with the rules that we have in this house, and in line with Senator Brackett's proposed motion, keep the men here, so that we can go ahead on Friday and Saturday without any stipulation.

The President — All in favor of reconsidering the vote on which the report of the Committee on Rules as amended was adopted will say Aye; Opposed, No. The Ayes have it and the motion is agreed to.

Mr. J. S. Phillips — I now move to reconsider the vote by which the amendment offered by Mr. Wiggins to the report was adopted.

The President — All in favor of the motion will say Aye, contrary No. The motion is agreed to. The question arises upon Mr. Wiggins' amendment which is now before the house. All in favor of the adoption of the amendment offered by Mr. Wiggins will say Aye. Contrary, No. The amendment is lost.

Mr. J. S. Phillips — Now, Mr. President, I move that the report of the Committee on Rules be adopted.

The President—All in favor of the motion will say Aye. Contrary, No. The Ayes have it and the report is adopted. Special orders. The Convention will go into Committee of the Whole for consideration of the Special Order No. 17, the report of the Committee on Legislative Organization; Compensation and Expenses of Members. Will Mr. Cullinan take the Chair?

Mr. Cullinan—Mr. President, I would like to be excused. I want to debate.

The President—Will Mr. Bockes take the Chair?

(Mr. Bockes takes the Chair.)

The Chairman—The Convention is now in the Committee of the Whole for the consideration of General Order No. 17.

Mr. J. L. O'Brian—Any member's opinion on this subject is just as good as any other member's opinion, so that in expressing my view of this, I express the view of nobody but myself, but from the standpoint of the man who has been a legislator there must be some change made in this section of the old Constitution, and the first change that ought to be considered is a change in the matter of properly adjusting the traveling expenses of the members of the Legislature. If you will stop and think, you will see that the man who lives in Chautauqua county must receive three or four hundred dollars less salary per year as a member of the Legislature than do those who live in close proximity to Albany. I recall that in one session of the Legislature of this State my traveling expenses on the New York Central Railroad were a fraction more than five hundred dollars. Now, there is no reason in law or in logic why a member should not be compensated for his actual traveling expenses going to and from his place of residence once a week. The amendment number 7, offered by Mr. Buxbaum, it seems to me, is a perfectly fair proposition. As I read that amendment it would eliminate the troublesome words "traveling expenses" with their ambiguity of determination, and it would insert "railroad fare," so that a member would receive from the State only the actual railroad fare incurred by him. With the proposals which seek to recompense a member for hotel bills and meals on trains, I have no sympathy, but it is only fair that actual railroad fare, actually paid, should be given to a member of the Legislature. On the other phase of the matter I think that if that is done, if the actual railroad fare were given the members of the Legislature, that $2000 a year would be a fair and adequate salary. That is neither $2500, nor is it $1500, nor is it compensation in a sense in which men are compensated in private life, but as things go in public life, and as salaries go in public life, this would mean a salary of practically $500 a month net for the legislator, because he

would have in addition his actual expenses for railroad transportation. And I, therefore, from the standpoint of one who has experienced the working of the old rule, respectfully recommend to the attention of the Convention this amendment of Mr. Buxbaum, which I think would meet the exigencies of the case and which I think also would meet with proper approval, because it is fair and reasonable.

Mr. Leggett — With the substance of what the last speaker has just stated in regard to mileage, I heartily concur. I think that railroad fare is just what should be provided for. The only question that I raise on that point is whether or not by railroad fare is included Pullman car fare. This may be more or less a personal question, because in traveling from my section of the country it is the only convenient way to come, and that is to travel at night. Now, as a matter of fact, if a man comes from Chautauqua, Cattaraugus or Allegany county he sacrifices not only railroad fare, but in time, more than any member from the vicinity of Albany. That sacrifice of time, I take it, cannot be compensated for, and I see no reason in fairness why he should not be compensated so far as extra outlay of money is concerned and be allowed. the privilege, for instance, of coming at night. Now, I have a suggestion to offer. I don't know whether it will meet with the favor of the Committee or not, but it is certainly in the nature of simplicity. I will take the figures in my own case, because I know just what they are. My mileage in coming to Albany is 312 miles. Three hundred and twelve miles one way, and 315 miles another. I take it on the 312-mile route because that is the way I usually travel and the most convenient and the cheapest fare we can get is mileage, and that costs two and a quarter cents a mile, which comes to $7.02. If I come at night, and the only way that I can without wasting an entire day in traveling is to come at night, I have to pay for a berth, $2.00, which makes $9.02 actual traveling expenses. Now, the distance, as I say, is 312 miles. That comes to just a trifle less than three cents a mile. My suggestion is, that following the rule that has been followed from time immemorial, in fixing the compensation on a basis of mileage, that we pay the legislators mileage at the rate of three cents a mile, and make it perfectly definite, a certain and definite sum of money to be paid, and one which should be a matter of computation.

Now, as to the amount, it will be practically a reimbursement of the actual amount of money that he has paid out in traveling. In a very few cases it might be that a man might get twenty-five cents more than he actually paid out for his fare and a Pullman, but I don't think any man would get more than fifty cents more.

Now, I think, for a great many, many years, I don't know how many, witnesses have been allowed four cents a mile, and so for the sake of testing the sense of the Committee on that proposition I will move as amendment that in lines 5 and 6 of page 1, the brackets be stricken out, and in line 5, after the word "receive" insert "three cents for each mile traveled" and strike out all of line 6, down to and including the word "paid" on line 7. So that it will read "Each member of the Legislature shall receive for his service an annual salary" and so forth, and then "The members of each House shall also receive three cents per mile for each mile traveled in going to and returning from their place of meeting on the most usual route, but not oftener than once each week during any session of the Legislature".

Mr. Schurman — I wish to ask the gentleman a question. I am very much in favor of his suggestion, as it seems to me to be a solution of the problem, but there is one consideration that strains me and I would like to have, if I may, an explanation. This amendment was under discussion before and a gentleman who had experience in the Legislature, Mr. A. E. Smith, from New York, stated that it was quite as important to have a voucher showing the payment made, so that members could be brought back here every week, and it would be known whether they came back or not, and I would like to know whether under the system suggested by Mr. Leggett, under which members would buy mileage tickets as a rule — whether it would be possible to present such vouchers to the comptroller for receiving his audit and in that way to make a record of the return to Albany of the members of the Legislature.

Mr. Leggett — If I may answer on the spur of the moment, I don't think that that objection would apply any more than it does to the way that it is contained in the proposal of the Committee. The sentence will remain that "Such expense shall be paid only on the verified voucher of the member entitled thereto after audit by the Comptroller." That will remain in there, and you can verify it just the same.

Mr. Schurman — You think a voucher could be presented?

Mr. Leggett — Yes. I know when working for the railroad I have taken a receipt for it right from the conductors.

Mr. Wadsworth — Mr. Chairman, in support of the amendment offered by Mr. Leggett, I want to say that this question of traveling expenses was a very serious one in the national government and they struggled with it for a great many years. Under the way they formerly paid the actual traveling expenses, so called, a great many frauds were perpetrated, and the thing got to be such a scandal that the Federal government adopted practically what Mr. Leggett has suggested here, a straight number of

cents per mile for actual traveling, and that eliminates all friction and trouble between the auditing officers and the person who is traveling, in regard to what constitutes legitimate expenses.

Mr. Vanderlyn — What was the rate? You referred to a rate that was established. What was the rate there established?

Mr. Wadsworth — The rate in Congress was six or seven cents a mile. I am not sure which, but that included the charges on Western railroads where the rate is much higher than in the State of New York. To give you a concrete example, three cents would give nine dollars for a member going to Buffalo. His fare is about six dollars. That would give him three dollars to pay for a berth or a parlor car, and, if, as many have recommended, four cents a mile is allowed, my original amendment, which I am willing to yield, it will give him twelve dollars. That would be six dollars for railroad fare and six dollars to pay for his berth, his parlor car, or his meals en route, and tip a porter, if you please. I am indifferent whether you have three or four cents a mile. If you make the salaries $2,000, I am willing to give him four cents a mile; if you insist upon making it $2,500, I think three cents would cover the actual cost of traveling and it would be sufficient. I want to assure you, gentlemen, that judging by the experience of the national government, there is no choice between the two methods. The flat rate per mile is the better.

Mr. Mereness — I have not the slightest idea that the overwhelming sentiment in favor of paying legislators more money for their services can be stayed, so far as putting it into this proposed constitution is concerned, than anything in the world. It would be as useless as it was for old King Canute to sit down on the edge of the sea and order the waves to stop rolling as an object lesson to his subjects. But, I don't think, Mr. Chairman, there ought to be any dollar marks in this proposed amended constitution that we are about to submit to the people. I don't think that they are in a frame of mind to act favorably on such a suggestion as that. I have thought sometimes of St. Paul as he spoke upon Mars hill and referred to the fact as he came along the side of the Acropolis and noticed that an altar had been erected to the unknown God — I have often thought that possibly if he could come to Capitol Hill in Albany, if he saw any altars erected, there would be no question but that all those altars would be erected to Mammon. But, possibly, that is an exaggerated view. I place the performance of legislative service upon an entirely different basis from that of all other service rendered to the State. I am in favor of getting fair compensation for what I do myself, but in the matter of legislative service I think that something should be left for the desire on the part of a good citizen to be of some

use to the State, without reference to whether he shall make money out of it or not. I do not doubt but that there are in every legislative district of the State many men competent to sit here in the Capitol in Albany, that are ambitious to have something to do with the affairs of State, even if they could break even. I think there are a great many young men in the State who are ambitious to have something to do with the affairs of the State, and I think that every delegate in this Convention can prove many instances where young men have come here and have made a record which has been a great help to them in all of their subsequent careers. That is all I want to say. I am against increasing the pay of legislators, both upon the ground of expediency and because I am against it on principle. We have heard too much about expediency in the framing of this Constitution. One man says that if you do so and so we will antagonize a million people. Another man says if you do so and so we will antagonize thirty-five thousand firemen and policemen, and it looks as though we were trying to make a Constitution so crooked that you wouldn't know it from a Virginia rail fence when we get through with it, and it may be possible that we shall be driven to the necessity of taking on the Spanish War veterans and the exempt firemen and all the retired judges in the State in order to have them put their shoulders to the wheel and help us through when we get our work done here.

Mr. J. L. O'Brian — Mr. Chairman, I would like to ask the gentleman on which side of this question he is speaking.

Mr. Mereness — Mr. Chairman, I should be more than pleased when I get through with my brief remarks to submit to a cross-examination by so expert a cross-examiner as Mr. O'Brian. I want to make one further observation in the interest of accuracy. It has been said here that in the House of Commons, the great legislative body of the most powerful nation on earth, that after seven hundred years, and after many attempts, the members of the House of Commons are now receiving the munificent sum of $1250 a year. The actual facts in reference to that matter are as follows: By a resolution moved by Lloyd George as Chancellor of the Exchequer, on August 10, 1911, and carried by 256 votes against 158, provision is made for the payment of salaries at the rate of 400 pounds a year to every member of the House — excluding any member who is for the time being in receipt of a salary as an officer of the House, or as a minister, or as an officer of his majesty's household. I want to make just this final observation, that it doesn't make much difference, whether you make the rate, three, four, or five cents a mile, a member might want to come up on some business during the summer season, or he might be put on some board or committee, and I think we had better

make the salary large enough to cover all the anticipated junkets that the members may think they want to take while the Legislature is not in session.

Mr. Fobes — Mr. Chairman, I have sent to the desk an amendment to this article which, in effect, makes the salaries of the Legislature $2,500 flat, cutting off all expenses traveling or otherwise.

Mr. Barnes — Mr. Chairman, I should like to call the attention of the Committee to the fact that we have only about twenty-two minutes more of this session. We have had three or four debates on it. Why can't we have a vote on some of these propositions so that we can clean this up before 1 o'clock? I don't wish to interrupt, but there are half a dozen amendments, and we all perhaps have formed an opinion on them.

Mr. Foley — Mr. Chairman, is that a motion for a call of the Committee?

Mr. Barnes — I would take the floor after Mr. Ostrander finishes. I have no right to take his time.

Mr. Foley — I think we ought to have a full attendance when we have a vote on any one of these amendments.

Mr. Ostrander — I want to say a word or two here in all seriousness, not with any sense of clap-trap, but I want to speak a word or two for the man who stands behind and pays us, the man who pays the taxes, the man who works in the shop, the railroad man, the man who works on the farm, the man who has to live in a house, the man everywhere who either directly on his little home or through the payment of rent, pays a tax. Now, I am not worrying at all about the man who is able to engage astute counsel who can draw the fine distinctions between residences for taxation purposes and domiciles for political purposes. They will take care of themselves. But let us stop and consider for a minutes whether a loyal man does not have some regard for his employer. Now I want, without going into any long discussion, to just call your attention for a minute to what the people who are doing the work in this country and sending us down here are getting. When I go home and a man asks me what was the use of boosting up the fellow's salary who was willing to spend two months and two thousand dollars to get down here for a $1,500 salary, I want to be able to give him some kind of an intelligent answer, if I can. I don't know what reason I can give him for any increase of salary here. I am willing that a man should have his decent expenses to come here and to go home, and to go home pretty often, for a good many of my constituents think the oftener the legislators go home and stay a while, the better it is for them. I want to tell you that 90 per cent of the skilled labor in this

country — and that takes in all sorts of skilled artisans — get less than one thousand dollars a year. I want to tell you that the teachers of this country get less than that; that the preachers get less than that; and Mr. Marshall has told us that the lawyers of New York city on the average get less than that. I want to tell you that 40 per cent of the skilled laborers get between $600 and $1,000, and 50 per cent get less than $600. I am not going into all the sources of this, but I will tell you that these figures are taken from the latest United States census returns. The railway employees of this country average less than $700. The knit-goods workers get from about $8.00 up to $12.00 a week. The foot-wear workers get from $8.00 up. The iron and steel workers, 49.69 per cent of them get less than 18 cents an hour, and a large per cent of them beyond that get less than 25 cents per hour. Now the farm laborers, the average earnings for 373,000 and more people in New York State employed upon the farms is $296.26. I want to tell you that 30 per cent. of the farmers have an income of between $100 and $250 a year; and 32 per cent. of them between $250 and $500 a year, and only 16 per cent get between $500 and $1,000 a year. I want to tell you of those men who are getting an income, which is not an income from the farm, which is not fed out upon the farm, of between $100 and $250; they comprise 21.8 per cent of our farmers. They have an investment of $1,298 and they have a mortgage of 44 per cent on their farms. Of those who get between $250 and $500 there are 28 per cent, practically with an investment of $2,236 and a 44 per cent mortgage on their farm. Twenty-four per cent of those getting between $500 and a thousand income have an investment of $4,577, and they have a 44 per cent mortgage on their farms. In addition, the head of the Finance Committee here will tell you that every one of them has got a bond debt of several dollars per acre on his farm — $13.10 an acre, on his farm, which is the first mortgage, ahead of these other things. I want to tell you that every man, woman and child out there has got a mortgage of $75 on his head, through our State and county taxation. I want to tell you that a very elaborate investigation by Attorney-General O'Malley of this State showed that the man —

Mr. M. Saxe — Doesn't the gentleman see the necessity, the great important necessity, of reaching personal property in this State in order to relieve that burden of taxation?

Mr. Ostrander — I will talk about that bye and bye. I am reminded of a story about the little telephone girl who arose in church when the meeting was nearly over and the minister said: "We will close by singing Hymn No. 243," and said "the line is busy." The Chairman of the Taxation Committee arises whenever any proposition is under debate and injects his great desire

to control the imposition of tax on personal property, for his department. I was about to say that Attorney-General O'Malley made a very elaborate investigation of the people who were conducting the dairy business in this State. He found that the return that the farmers received per cow was $31; that the whole product they got from them was $36, and that the expense was greater than the income. Now, we hear a great many poetic stories about the sweet clover breath of the cow, but the man who is sitting down there seventeen or eighteen hours a day at the other end of the cow is not getting any such clover breath. The milk selling for 3.33 cents per quart is costing a little over three and a half cents per quart.

Mr. Griffin — Will you kindly tell us what the farmers get for bulls?

Mr. Ostrander — All that I have to say to the gentleman is that the topic of "bull" is more prominent here in this Assembly than it is in the farmer's pocket. I will tie mine outside for the present. I want to say to you that the farmer, up until about the time of Cleveland, used to be able to keep sheep, but since that time when there is one he is sheared wrong end to, because the farmer doesn't dare to look him in the face. The sheep industry is dead. Now, this is not at all a funny proposition. It is a serious one. It applies not only to this question of raising salaries of members of the Legislature, but it applies to all these increases of expenses, the putting of expensive men on the top all along the line. Now, I do not believe that our people will look with any favor on a proposition that adds a quarter of a million dollars a year to their taxes for no appreciable purpose. You needn't ever be worried about people not coming to the Legislature, for a dollar that they get from the State looks better to them than ten dollars that they get from any other source on earth. It is entirely needless. The people who are working throughout the country for an average of about $600 a year — and that includes some college professors, I guess, as well as preachers and teachers, the bone and muscle and sinew of this country — working twelve months in the year for it, do not see any immediate necessity why a man of the quality of men we get in the Legislature nowadays should get at the rate of $7,500 a year or more.

Mr. Lindsay — I see the salary of the surrogate of Saratoga county is $2,500 a year, with $500 for clerk hire. Can the gentleman tell me from any knowledge of the hours worked by the surrogate how much he receives per hour?

Mr. Ostrander — I will give you the hours and you can make the computation. It runs from a call on the telephone at about four o'clock in the morning from some old woman who wants to

know about her estate up until about ten o'clock at night, most every day in the year. I have not the time to figure the hours.

Mr. Lindsay — I was figuring here, briefly, that if the surrogate worked 300 days in the year at eight hours a day, it would be slightly over one dollar an hour for each day of that time.

Mr. Ostrander — I will say to the gentleman that it runs 365 days in the year in Saratoga county.

Mr. A. E. Smith — How about leap year?

Mr. Ostrander — In leap year we work another day. I will also say to the gentleman that the surrogate does not stop when the Legislature is through; it is not a four months' job by any means. I don't know as it is worth what he gets; sometimes I think it is not. I know that a great many of the salaries that are paid here are greatly in excess of the service rendered. At any time when the constituents of the gentleman who has spoken feel that it is too much, they are at perfect liberty to cut it down. Now, as I said before, I think we ought to have due regard for the man we are working for, and I think we ought very seriously to consider his income as well as ours. Of course, it is a very attractive statement to say that there has been a change, that there has been increase in the cost of living since the last Constitution was adopted. I wish to say to the gentlemen that the man at home with five or six children whom he is trying to send to school on about $600 a year has the same trouble with the high cost of living himself.

Mr. Byrne — If I am able at all to appreciate what the sentiment of the body is either by vote or remarks — I understood when this matter was put over the other day that it was only with regard to the question of mileage, that was to be given in addition to the $2,500. I am awfully sorry for the farmer — very sorry. I am sorry for the people of the city of New York who will pay about 73 per cent. of this increase. Gentlemen, it seems to me after the discussion we have had here that it is about time to do what the old judge said when he was being constantly heckled — "Let us brush out the chinquapins and get down to the stomach of this case." Do you want to give the Legislature $2,500 a year? Now, we can talk for another hour on this and we will not get one bit farther. Do you or do you not want to give it to them? Let us vote on it.

Mr. Buxbaum — After talking with several of the delegates here it seems to me that the amendment offered by Mr. Leggett has met with a great deal of approval — the amendment offered by Mr. Leggett to the amendment which I proposed — and I desire to accept that amendment, so that it will now provide for

compensation in the sum of $2,000 and mileage at the rate of three cents a mile.

The Chairman — Will Mr. Buxbaum send his amendment to the desk in writing?

Mr. J. L. O'Brian — Mr. Chairman, I think the best way to proceed with this matter is first to dispose of the question of expenses or mileage. After we have disposed of that we can very readily, in the light of what we do with it, dispose of the question of salaries. I desire to offer an amendment on that subject which I will read myself. It is that on lines 6 and 7, you strike out the words "their traveling expenses" and instead insert "the railroad fare". On the same page, strike out the words "such expenses shall be paid", and instead insert "such railroad fare shall be repaid". Now, Mr. Chairman, I am opposed to the proposition of three cents or four cents a mile. I appreciate that when I say "the railroad fare" that does not include meals, but I think that is getting down to a pretty small phase of the matter. A man would have to eat if he stayed at home, in my view of the matter, and I see no reason why the State should pay for his meals.

Mr. M. Saxe — Will the gentleman yield for a question?

Mr. J. L. O'Brian — Mr. Chairman, I have not the same wit as Judge Ostrander, and I am afraid of any question of that sort, and I will not yield at this time, particularly as I hope the house is going to get through here. Now, I think a man should receive his actual railroad fare. The man on the street knows what that means. The man on the farm knows what that means. When you say that he shall receive railroad fare at the rate of three cents a mile immediately that suggests to the man at home that a man traveling from Buffalo gets a bonus of two dollars each way. Now it is all very well to say that he has expenses to meet out of that two dollars, but it establishes a wrong principle. It establishes a principle not based on actual cost. The day has not come in this State when everybody travels in a Pullman. Perhaps the members of this body do, but the great bulk of the people still ride in day coaches. In my view of the matter, a man is fairly treated by the State if he receives his actual railroad fare and he pays for his Pullman seat and any meals he desires to eat or any cigars he desires to smoke, out of his own pocket. "Railroad fare" is a term that everybody understands; it allows of no variations: it allows of no shading, no bonuses, no graft, and I think it should be adopted. Mr. Chairman, I respectfully move the adoption of the amendment.

Mr. Barnes — It is now three minutes of one o'clock.

Mr. J. L. O'Brian—I think we should vote on this proposition.

Mr. Barnes — That is what I am suggesting. Mr. O'Brian's amendment is before the House. There are two questions involved in this matter; first, the question of salaries; and second, the equalization of the salaries of members of the Legislature because of the difference in distance that they live from Albany. It seems only fair that every member of the Legislature should be on an equal footing. I do not see but that we have discussed this frequently. We could pass on this amendment offered by Mr. O'Brian now and then take up the question of what salary they should receive.

The Chairman — I call attention to the fact that there are at least thirteen amendments proposed.

Mr. Haffen — I agree with Mr. O'Brian and also with Mr. Barnes in connection with this matter, but I do desire to state this: Several days ago quite a number of the amendments were printed and placed on the desks of the members. I think they should be referred to. The very same matter suggested by Mr. O'Brian was presented before.

Mr. J. G. Saxe — Mr. Chairman, may the O'Brian amendment be read again?

The Chairman — The Clerk will read over Mr. O'Brian's amendment.

The Secretary — By Mr. J. L. O'Brian. Page 1, lines 6 and 7, strike out the words "their traveling expenses" and instead insert "the raiiroad fare."

Page 2, line 10, strike out the words "such expenses shall be paid" and instead insert the words "such railroad fare shall be repaid".

Mr. J. L. O'Brian — Mr. Chairman, I would like to correct my amendment, on page 2, lines 6 and 7, so that there will be stricken out the words "their traveling expenses necessarily incurred and", so that the amendment would read, if adopted, "the railroad fare actually paid".

Mr. Lindsay — I do not wish to take up much of the time of the Convention, but, as the person in charge of this amendment, I have not yet been heard. I wish to oppose the idea of making a definite mileage. I am just as certain as I am that I stand here that the defeat of the last amendment for an increase arose out of that question because at the polls that question was raised to me a dozen times; it was the only question that was raised, about the increase. They thought they were making money out of the mileage. Up our way mileage is two cents or less and when they saw "three cents a mile" they said, "why, this is graft." If you put it in at any definite amount, unless you put it at the

lowest amount, you are going to have that very trouble at this time and it is going to injure the proposition. Now, I wish to speak in regard to another matter, and then I am done. All I want is that this Convention should do what it thinks best in this matter, both in an expedient way and as a just proposition. The other matter I want to speak about is this: It does not do any good to come before this Convention and set forth these reports of the amount that the workman is receiving in this country, because the workman has indorsed the proposition and requested this Convention to increase the amount. Not only that, but the Manufacturers' Association of this State, the direct opposite of the laboring classes, has also indorsed it and asked that it pass, not at any particular amount, but an increase. I know some of the objections to the increase in legislative salaries. You are trying to base it upon the opposition of the people to this increase, when it does not come from the people at all. There was a lobbyist in this room the other day, and I asked him what he thought about this proposition. He first said, "Why, of course, they should be increased." And then he expressed an idea which is used in opposition to this measure: "I don't know as I do. It used to be when we had a smaller salary that we had a pretty good quality of men in our board of aldermen, but since"— mark my words—"we increased the pay of the board of aldermen we are getting lots of laboring men on there". He did not want them. Finally he shifted aside and said, "I dont't think it is a good thing". That is where your opposition is coming from.

Mr. J. L. O'Brian — Mr. Chairman, my amendment is exactly the same as the latter part of Mr. Buxbaum's original amendment and I trust it will be accepted.

Mr. Foley — I disagree with the statements made by those who favor the insertion of a mileage provision in the Constitution. I think that the principal cause of the defeat of the amendment in 1911 was the fact that it included mileage and that the people of the State, especially upstate, associated the word "mileage" with graft, and junketing. Now I would rather see a small increase in pay than that any item be inserted in this provision for mileage. I look at it merely from the standpoint of expediency. I think you are making a mistake and I think you are loading up your proposition here with something that is absolutely unnecessary. I would prefer to see Mr. Fobes' amendment adopted, providing for a straight salary of $2,000 or $2,500, without mentioning mileage at all.

Mr. J. S. Phillips — Mr. Chairman, if I may be permitted to say just a word. I think my "short" experience in the Legislature enables me to speak accurately on this proposition and my

humble judgment is that the salaries of members of the Legislature should be increased. I feel, however, that the chance of its adoption will be better to leave out the question of mileage and fix a flat compensation of $2,500. That is somewhat of an increase and will at least enable a legislator to pay his expenses. It seems to me we should simply make the salary $2,500, with no mileage provision whatever.

Mr. Griffin — If you believe in making salaries uniform, do you believe that you are going to accomplish that by giving the same salaries to the representatives from Albany county and Rensselaer county that you give to one who comes from Erie county, in the western part of the State? In other words, don't you see that if you fix a flat salary you lessen the salary of the men who are remote from the capital by so much as their mileage amounts to every year? In the case of the representative from Buffalo, it amounts to $600 a year and in the case of New York representatives it amounts to $400 a year. Isn't that a fact?

Mr. J. S. Phillips — Mr. Chairman, I recognize that fact, but that is a penalty that a man who holds a State office pays for living a considerable distance from the State capital.

Mr. Brackett — What is the law — and I ask it seriously — with respect to the superintendent of insurance, as to whether he gets mileage or not?

Mr. J. S. Phillips — There is no mileage or expenses allowed except when he is away from the capital on official business. Traveling to and from his home, back and forth, there is no expense allowance for any State officer.

Mr. Brackett — How about the New York office?

Mr. J. S. Phillips — He gets mileage and expenses in that case because Albany is the seat of government and he is supposed to transact all of his business here. If he is compelled to go there on official business, his expenses are paid.

Mr. Quigg — Mr. Chairman, unless the committee is prepared to vote, and it evidently is not, I suggest that the time for recess has arrived, under the rule.

Mr. J. S. Phillips —Mr. Chairman, I haven't anything further to say. I simply want to say I am in favor of the Fobes amendment.

The Chairman — The hour of 1 o'clock having arrived, the Committee will take a recess until 2:30 p. m. Whereupon, at 1:05 p. m., the Committee took a recess until 2:30 p. m. of the same day.

AFTER RECESS—2:30 P. M.

(Mr. Bockes in the Chair.)

The Chairman — The Committee of the Whole will come to order in further consideration of General Order No. 17.

Mr. J. L. O'Brian — Mr. Chairman, this matter has been fully discussed now in three different sessions of the Convention. As I said this morning it seems to me the sensible thing to do in disposing of it was to dispose first of the question whether there should be any allowance for traveling expenses or mileage, because with that question settled first, we can more readily determine what should be done, if anything, in the matter of increasing salaries. Under the ordinary procedure of the House I assume that these various amendments which have been printed should be taken up in the order in which they are offered, but nearly all of these amendments which have been printed involve both the question of salary and the question of mileage.

Mr. Austin — I think the gentleman is in error in assuming that these amendments should be taken up in order. If you will recollect, these were amendments which were offered in the Convention itself, to this proposition, and were merely referred to the Committee of the Whole for its information.

Mr. J. L. O'Brian — My memory is refreshed by that statement, Mr. Chairman, and if that is the case, I think the only amendment is that which I offered, which I took from the amendment offered by Mr. Buxbaum and the amendment by Mr. Haffen, and it is practically the same as that part of Mr. E. N. Smith's amendment. In that connection I will ask for a vote now on my amendment to substitute the words "railroad fares".

Mr. Wickersham — Mr. Chairman, I suggest the absence of a quorum. I think we might wait a few moments to see if more gentlemen come in. I don't think we ought to proceed with this scanty attendance here.

Judge, if you will pardon my suggesting — I think more of the delegates ought to be here. This is a subject which interests many of them. I don't formally move —

Mr. Barnes — I think it is the only way to do it. I call the attention of the Chair to the lack of a quorum.

Mr. Wickersham — I think, Mr. Chairman, that the delegates are coming in. Mr. Chairman, may I ask that the sergeant-at-arms be instructed to ask the delegates to come in?

The Chairman — The sergeant-at-arms will ask the delegates to take their seats.

Mr. Sheehan — Mr. Chairman, may I ask if we now stand in recess while the sergeant-at-arms performs his duties.

Mr. Wickersham — We are not in recess.

Mr. Barnes — We are in suspense.

Mr. Sheehan — There would be no objection to the Chairman recognizing me.

Mr. Wickersham — I rose because there was an insufficient number. I thought we ought to suspend proceedings for a moment informally to give the delegates a moment to come in.

Mr. Sheehan — They are coming in now.

The Chairman — If the gentleman will withdraw his suggestion of no quorum.

Mr. Wickersham — I now withdraw my suggestion.

Mr. Griffin — If there is one thing, Mr. Chairman, that I would like to talk about, it is this proposition before the Convention. It was the one thing I had in my mind upon which I believed that the Convention could make some improvement in the existing conditions. We have heard comment upon this proposal to increase the salaries of the legislators from delegates of various quarters of the State, and having various political experience. But I do believe that it is proper that the Convention ought to have the advantage of the experience of the men who have been in the Legislature. Now, I was in the Senate for four years, and let me give you briefly just what my experience was personally, and also my observation. There are fifty-six thousand registered voters in the Twenty-second Senatorial District from which I come. If we recognize education as a factor in an election, if we recognize the fact that appeals to the intelligence of the voter are going to have any effect, it is necessary to appeal to those voters direct by letters. Now, if I were to send a circular letter to each voter in my district, with a two-cent stamp on it, it would cost just $1120 to reach them, to announce the fact that I was a candidate for the office of Senator. Now, of course I did not spend that much money for postage the first time I was elected, but I did spend in the neighborhood of $800 for postage. And my election cost me $1800 the first time I was elected. The second time I was elected it cost me pretty near as much. There are advertisements in newspapers of all kinds, published in every language. They expect that. That is a part of the mild blackmail to which candidates for office are subject, and I, together with every other man who runs for office in New York city, has to submit to it.

Mr. A. E. Smith — Not me.

Mr. Griffin — There are tickets for chowder parties, for picnics, for balls and for dances, and a thousand and one things that add to the expense of a candidate who seeks honor at the hands of his fellow citizens in this State. Now, the expenses of a candidate

for the Assembly is in the neighborhood of six or seven hundred dollars. There is this disparity between expenses of Senators and Assemblymen which I think ought to be taken into consideration, and in the proposal which I submitted for an increase of salaries of legislators, I suggested, I believe, that the salaries of Senators ought to be $3,000, and those of Assemblymen $2,500, in order to equalize this matter of expense in election. Now, a man comes up here to Albany. He has got to live respectably, no matter what his previous condition may have been or how economical he may be. He has got to live at a good hotel, or live in proper rooms. He has to appear well and he has got to spend money. He is a pretty cheap sort of individual who can get out of a term, an ordinary term of the Legislature at a less expense than $25 a week, and the session usually lasts for thirteen, fourteen, or fifteen weeks. In 1911, we met here all the year right up to the close. In the year 1913 there was hardly a week of any month during the entire year in which the Legislature was not at the call of the Governor and the people of the State.

It is all very well to talk grandiloquently about the obligations that men owe to their country and to their State, to serve without compensation, but I want to tell you that there is a menace, and there is a danger in this matter of improperly and insufficiently paying your legislators. Mr. Lindsay spoke a moment ago when this matter was under debate and indicated where the danger lay. The danger lay in this, that the poorly paid legislator, the man who is impecunious, but nevertheless ambitious, becomes a target for those who want to subvert and undermine his morals, and many a young man in these legislative halls in the past has been turned from the path of rectitude by the fact of dire necessity. Take the session of 1913, when the men could not be brought up here to this Assembly except under threats and in many cases I have known where they have had to borrow in order to get their expenses to come up here, not only from New York, but from the western part of the State as well. If you want good men you must pay them. What is the excuse that you offer for the high salary that is paid to Public Service Commissioners and to your judges? It is that they pass upon matters of great monetary importance, and that they ought to be kept in a position of ease and comfort so as to be above temptation. If that argument is good with respect to judges and to members of your Public Service Commissions, I direct your attention to this proposition, whether the Public Service Commissions or any judge in any department has to pass upon matters of greater monetary importance than are determined upon and passed upon in these chambers. Perhaps you don't think that millions of dollars of

the people's money are appropriated away; perhaps you don't think that amounts to anything as we measure these things, but they do amount to something; and you must pay your legislators fair and decent salaries. Young men won't come up here to the Legislature for more than one or two terms if they can help it. If they do there is a motive behind it. There are other interests which compel them. The men who give their attention to legislative work here are helped out indirectly; their salary is known to be insufficient and they are appointed as referees, commissioners of street openings, and other plums of patronage are given to them. But see the danger in that proposition, putting a young man in the Legislature, depending upon $1,500 a year, of which when he comes to Albany he has only about $500 to come, and tell him you are going to help him out with references and street opening commissionerships. What is going to be the effect? You make him a mere tool in this body. He is owned body and soul. Now, let us have the manliness to face the facts with frankness and honesty. Let us pay the members of the Legislature an adequate salary, because they are at the beck and call of the people for the entire year. In my own experience there was not a Saturday or Monday morning when my office was not crowded like a doctor's office. Up here we receive a bundle of messages and letters which practically make an errand boy out of us trying to do favors for our constituents, and every man who has been in the Legislature has had this experience. He is at the beck and call of his constituents, not only for the legislative year — you talk about the legislative year of three months; it amounts to months and months of service, and you cannot do anything improper in awarding the members of the Legislature a fair, adequate and reasonable compensation which shall put them beyond the reach of extraneous influences.

Mr. Stowell — Mr. Chairman, I am in favor of the proposition to give members of the Legislature $2,500 and their actual traveling expenses. I have come to that conclusion from my experience as a delegate in this convention. I say to you, Mr. Chairman, that after the expenses of a member of the Legislature, who only receives $1,500 a year, with his expenses here and the expenses of election, there is nothing to speak of remaining to him at the end of the year. Now, I have never been a member of the Legislature; I never expect to be. I have not been approached by any past member of the Legislature, any present member of the Legislature, or any propspective member, upon this subject, but I cannot see how we can get proper, able, efficient men here and continue to come here on the salary that is being paid at present. Now, our friend from Saratoga county draws a very affecting picture of

the poor taxpayer up in that county. My own observation is, as to our own county, and I think that is so in other parts of the State, we are living on a higher plane now than that on which we lived 25 or 50 years ago. I do not believe that the taxpayers of this State will object to a reasonable increase of salary. I am also in favor of actual traveling expenses. And it seems to me that the proposition of Mr. O'Brian and perhaps of Mr. Leggett covers that precisely. Now, I really hope that this proposition to increase the salaries to $2,500 will prevail, and also the compensation for expenses. Mr. Chairman, I believe that discussion has progressed to that extent that further discussion is useless. I therefore move you that we now proceed to a vote.

The Chairman —All in favor of the motion will say Aye, opposed No. The motion seems to be carried. It is carried.

Mr. J. L. O'Brian — Mr. Chairman, the question now is on my amendment.

Mr. Barnes — I thought the amendment had been carried. I will speak later on, Mr. Chairman.

Mr. J. L. O'Brian — Mr. Chairman, as I understand it, the question now will be on the amendment offered by me.

The Chairman — The Chair is of the opinion that, except by unanimous consent, under the rules, the amendments must be taken up in their order.

Mr. J. L. O'Brian — Mr. Chairman, the only amendment pending in Committee of the Whole is the amendment which I have offered.

The Chairman — The Chair is otherwise informed. The desk informs the Chair that proposed amendments are pending by Mr. Leggett, Mr. Fobes, and Mr. Buxbaum.

Mr. J. G. Saxe — Mr. Chairman, I ask unanimous consent that Mr. O'Brian's amendment be taken up first.

The Chairman — Is there objection?

A Delegate — Objection.

The Chairman — The question now arises on the amendment proposed by Mr. Leggett. The Clerk will read.

The Secretary — By Mr. Leggett. Page 1, line 6, strike out the words "their traveling" and insert in italics "three cents for each mile traveled" also, strike out all of lines 6 and 7, to and including the word "paid".

The Chairman —All in favor of the amendment will say Aye, opposed No. The amendment is lost. The question now arises on the amendment proposed by Mr. Fobes. The Clerk will read.

The Secretary — By Mr. Fobes. Section 6, page 1, strike out the italicized matter in lines 5 to 10, inclusive, and in the first

two lines of page 2. In the same lines, place the unitalicized matter in brackets.

Mr. Cobb — This, as I understand, makes the salary $2,500 without any allowance for expenses of any kind.

The Chairman —All in favor of the amendment will say Aye, opposed No. The amendment is lost. Is the Chair to understand that the amendment of Mr. Buxbaum is withdrawn?

Mr. Buxbaum — Mr. Chairman, I accepted Mr. O'Brian's amendment to the latter part of my amendment.

The Chairman — The Clerk will read.

The Secretary — By Mr. J. L. O'Brian. Page 1, lines 6 and 7 strike out the words "their traveling expenses necessarily incurred" and insert the following: "railroad fare", page 1, line 10, strike out the words "such expenses shall be paid" and instead insert the words "such railroad fare shall be repaid."

The Chairman —All in favor of the amendment will signify by saying Aye, contrary No. The amendment is carried.

Mr. Barnes — I would like to offer an amendment now to line 4, to restore the salary to $1,500. I know the Convention has voted against this proposal but I wish to make one last plea for it. It seems to me that in a number of our actions here we are appealing to what we believe to be sentiment —

Mr. Griffin —A point of order. I regret very much having to do this — I understand that the debate has been closed. The previous question has now been moved and we are voting upon the amendments proposed to this bill.

Mr. J. G. Saxe — There is no previous question in General Orders.

Mr. Barnes — Will the Chair decide the question whether I am in order.

The Chairman — The Chair thinks Mr. Barnes is in order.

Mr. Griffin — What is the order of business before the Convention? Are we upon the previous question which has been asked?

The Chairman — The Chair has heard no previous question raised and an amendment is being proposed by Mr. Barnes.

Mr. Barnes — I think in a number of instances this Convention has failed to realize the sentiment of those citizens who elected a majority of this Convention. I do not wish to raise any political issue, and do not, but I do believe that the Republican members of this House are going to fail in appreciation of the sentiment of the people who voted for them if they vote salary increases to the legislators. I believe that a number of mistakes have been made in the reports of some of the committees in raising salaries of any kind. It is possible that the salary of the Governor might

properly be raised but no action on the part of this Convention will be more unpopular than increasing salaries, especially in a time when business conditions are as they are to-day. We have adjusted, by the amendment proposed by Mr. O'Brian, the salaries of the members of the Legislature, and made them equal. I, therefore, propose to amend this by striking out the word "two" and inserting in its place the word "one", now in the Constitution. I hope that you will not err in this matter, as it seems to me you will if you increase these salaries.

Mr. J. G. Saxe — I hope Mr. Barnes will not press that amendment and I also hope that the suggestions around the room of a compromise on $2,000 will not be pressed. I wonder if the members of this Convention realize that in a Senate of 51 members at present there are only five members who were there in 1910, and that since 1910 over a hundred Senators have come and gone. You cannot keep good men in office even if you get them there if you keep the salary at only $1,500. Two thousand dollars is only a very little better. It ought to be five thousand if we are going to attract good men and keep them there. While I realize that $5,000 is not possible in this Convention, I know it ought to be that salary, and by giving them that the State would save itself all kinds of money in the effectiveness of the work done, and in the class of men, who would not be forever spending the State's money indirectly and frequently for their own benefit. We ought to have some permanence in our legislative bodies. A man ought to be able to live for a little while at other than his own expense, as those of us who were in the Senate in my time were compelled to do, out of our own pockets. They ought to be paid at least $2,500. The only argument I have heard against this has been this terrible argument of expediency. Although the joke is partly on myself, being one of the Legislature of 1911, I want to tell you why that amendment was defeated. It was defeated because we started off with a political fight among ourselves which lasted from January until April Fool's Day, and then continued in session to about the 20th of October. However good the constructive work was which we did — and I believe it to have been very good — I know and I realize fully that virtually all the voters of the State were absolutely sick and tired of us when we finally managed to get out along about October 15th. That was the principal reason why that amendment was beaten. The other reason was because every newspaper in the State, partly because of misunderstanding and in a limited sense because they were right — every newspaper condemned the so-called Levy Law, and we had a fight which went all the way to the Court of Appeals, with a great deal of public attention directed at that law through

the newspapers. Those two things — the fact that the people generally got tired of a Legislature which could not adjourn before October, and because there was one particular measure which was made an object of attack by all our opponents — there was such a sentiment against the Legislature that they would have abolished it altogether if they could. Now that is not the situation to-day. If they are going to take this Convention seriously and take its work seriously, they are going to realize the small salaries that they have received here, and I venture to say that a fair salary for members of the Legislature, which virtually every one of us knows ought to be at least $2,500, will be accepted without comment throughout the State of New York.

Mr. Buxbaum — I now reach Amendment No. 7, introduced by me, with the exception of the latter part, which was already amended in accordance with the proposal of Mr. O'Brian. It now leaves simply the first part. On line 4, strike out the words " five hundred ".

Mr. Whipple — Some one has said " Consistency, thou art a jewel." I am surprised to hear the ex-Senator urge an increase in the salary of members of the Legislature upon the theory that we cannot get good service unless that is done, and cannot keep the men here. I am surprised to hear him say that, when I remember that he strongly advocated a nine-headed commission without pay for the Conservation Department, because that was the only way that we could get well-qualified men.

Mr. Westwood — Mr. Chairman, I desire to offer an amendment on page 1, line 4. Strike out " two thousand five hundred " and insert " three thousand ". If we are going to withdraw from the action that we deliberately took here the other day, after two or three hours' debate on this proposition, then let us open it up wide, and let us put into the bill which we send back to the third reading calendar a figure which has been reflected in a number of bills introduced in this body.

Mr. J. L. O'Brian — I should like to say a word in behalf of the amendment offered by Mr. Buxbaum. I think his is a fair and reasonable proposition, namely, now that we have undertaken to insure the repayment of railroad expenses to members of the Legislature, that we fix the salary at $2,000 per year. As between the various amendments that have been offered I certainly should prefer the amendment offered by Mr. Barnes to that offered by Mr. Westwood. Two thousand dollars a year, gentlemen, is a little more money than it appears to be, because the Legislature on the average is in session only four months in the year. That means compensation at the rate of $500 per month, not for continuous service, but for service by the week in which the legislators are

here in Albany anywhere from two to five days in the week. In the early part of the session they are here three days a week, and in the latter part they are here all through the week. Now, I think with their railroad fare, $500 per month is a fair and adequate compensation. That is at the rate of $6,000 per year as years are measured in the other branches of the State's service, and I think it is fair to compromise a matter of this sort where opinions differ theoretically; taking on the one hand, Mr. Barnes' suggestion of $1,500 and on the other hand, the amount voted upon by the House, $2,500. This is half way between the two and it will provide an adequate compensation and a fair increase over what members are now receiving and I hope that Mr. Buxbaum's amendment will be adopted.

Mr. C. A. Weber — I hope that that amendment will not be adopted. It seems to me that $2,500 is none too much. It is pretty near time that we stopped the cry of the people and their asking, "How do the legislators do it?" "How do they live on the money that they get?" and then the people won't pay them a decent salary. The observation of everybody is that the people who have any influence at all in the Legislature are the people who make legislation a business, who have no other means of livelihood and have to depend upon what they get here. Now, if that is the case, it has got to be a business, and it really has to be a business, and you have got to pay the people who do it a salary. You cannot figure it out that they act for three or four months and they get a large salary for that time. They get the salary for the whole year.

Mr. Green — I wish to say just a word on this proposition. I spoke on it briefly a few days ago and advised the gentlemen that so far as the Senator from the district I represent and the Assemblyman from my district are concerned they are not urging any increase of salary.

When at home I took very great pains to discuss matters with men in whom I have a great deal of confidence as to their judgment being pretty correct in matters of this character and I wish to say that the business men and the professional men with whom I talked and particularly the labor interests, those who represent the various bodies of labor organizations there, were strongly in favor of increasing the salary to $2,500 per annum; they claiming that a poor man has no show whatever, unless he puts himself in the hands of some one to finance him to go through with the present direct primary system and the expenses of election and then to come up here and maintain himself. My judgment is that we, having passed this proposition, paying weekly round trip expenses, so far as railroad fares are concerned, if

that be true, I think that $2,000 will suit the people back home, and I think it pretty near as fair as $2,500 would have been without the railroad expenses and I am in favor of the Buxbaum amendment.

Mr. E. N. Smith — I do not wish to take up the time of the Committee with this subject which has been so thoroughly discussed. I offered the same amendment as Mr. Buxbaum offered because I believe that it fairly represents the judgment of the people on that subject. I think that perhaps the people would be as well satisfied if Mr. Barnes' proposal, leaving the Constitution in this regard as it is, were adopted. I don't believe that the people will be satisfied with a raise of salary to $2,500. I have had some experience here and I believe that the requirements of Albany entitle members of the Assembly and Senators to the salary of $2,000, and I believe that is sufficient for all purposes. A legislative office should not be an office, the salary as to which should be looked upon as a compensation or something to make money out of, but certainly members ought to have their expenses amply paid and I therefore hope that Mr. Buxbaum's amendment will prevail.

The Chairman — The question now arises upon the amendment offered by Mr. Barnes,—

Mr. Westwood — Mr. Chairman, I desire to direct your attention to a proposition of order; under the rule which provides that when a blank is to be filled and different sums shall be proposed the question shall be first taken on the highest sum or the longest time. By virtue of that rule, the vote must be upon the highest sum.

Mr. J. L. O'Brian — Mr. Chairman, I do not understand that there is any blank to be filled. The motions before the House are to strike out existing matter and substitute new matter, and, therefore, the ordinary procedure of taking up amendments in their order should prevail.

The Chairman — The Chair so rules and the question is upon the motion by Mr. Barnes, who moves to strike out the word "two" and insert the word "one" in line 4, page 1, of the amendment. All those in favor will say Aye, contrary No. The amendment is lost. The motion occurs upon the motion to amend by Mr. Buxbaum. The Clerk will read the proposal by Mr. Buxbaum.

The Secretary — By Mr. Buxbaum: Line 4, strike out the words "five hundred".

Mr. Marshall — I ask for a division.

The Chairman — All in favor of the amendment proposed by

Mr. Buxbaum will please rise. The delegates will take their seats. All opposed will rise. The delegates will take their seats. The Clerk will announce the result.

The Secretary — Ayes, 53; Noes, 59.

The Chairman — The amendment is lost. The question now occurs upon the amendment offered by Mr. Westwood.

Mr. Westwood — Mr. Chairman, do I understand that the Buxbaum amendment has been defeated?

The Chairman — The bill remains, so far, in the form in which it was, $2,500.

Mr. Westwood — It means in the sum of $2,500; is that true?

The Chairman — That is as the Chair understands it.

Mr Westwood — I ask to be permitted to withdraw my amendment.

The Chairman — The amendment offered by Mr. Westwood is withdrawn.

Mr. J. G. Saxe — Mr. Chairman, I move that the amendment be reported favorably to the Convention, as amended.

The Chairman — Mr. Saxe moves that the bill be reported favorably as amended. All in favor signify by saying Aye, all opposed No. The motion is agreed to.

Mr. Wickersham — I move that the Committee do now rise and report the action taken on this bill.

The Chairman — The motion is made that the Committee do now rise and report progress upon this bill,— report the bill favorably. All in favor signify it by saying Aye.

Mr. Brackett — Mr. Chairman, the motion ought not to be to rise and report progress.

The Chairman — The Chair corrected it in that respect. The question as put is, that the Committee rise and report the bill favorably. All those in favor say Aye, all those opposed No. The motion is carried. (The President resumes the Chair.)

The President — The Convention will come to order.

Mr. Bockes — The Committee of the Whole having had under consideration General Orders No. 17, directs me, as Chairman of the Committee, to report that they have amended the same and that they report it favorably as amended to the Convention.

The President — The question is upon agreeing to the report of the Committee. All in favor of agreeing to the report will say Aye, contrary No. The Ayes appear to have it. The Ayes have it, and the report is agreed to, and the proposed amendment to the Constitution goes to the order of third reading.

Mr. Wickersham — Before taking up the calendar of special orders arranged under the rules, agreed to last evening and amended this morning, I desire to give notice to the House that

I shall to-morrow morning move a call of the House and in case there be an absence of a quorum a close call and I shall do the same thing on Saturday morning.

Mr. Wickersham — Mr. President, I now move that we go into Committee of the Whole on the calendar of special orders.

Mr. Buxbaum — Mr. President, I ask to be excused from attending to-morrow. I have made a very important engagement some time ago, expecting that this Convention would end its deliberations on or about the 16th of August, and I would like to be excused.

The President — Are there any remarks to be made on the request that Mr. Buxbaum be excused?

Mr. Eisner — Mr. President, I desire to make application to be excused to-morrow morning only.

The President — The pending question is upon Mr. Buxbaum's request to be excused to-morrow, Friday. That is limited to to-morrow, Mr. Buxbaum?

Mr. Buxbaum — Yes.

The President — All those in favor of excusing Mr. Buxbaum for to-morrow only will say Aye, contrary No. The Chair is in doubt. All in favor of excusing Mr. Buxbaum to-morrow will rise and remain standing until counted. All opposed will rise. The excuse is granted.

Mr. Eisner — Mr. President, although I understand that there is a movement to defeat my application, I nevertheless will have the temerity to ask that I be excused for to-morrow morning only and I shall return to-morrow afternoon.

The President — All in favor of excusing Mr. Eisner for to-morrow morning only will say Aye, contrary No. The Ayes appear to have it. The Ayes have it and Mr. Eisner is excused for to-morrow morning only.

Mr. Unger — Mr. President, may I ask to be excused on Saturday from attendance at the Convention? I put that in the form of a motion.

Mr. Wickersham — Mr. President, I very greatly regret to, but I shall be obliged to object to any requests to be excused unless there accompanies the request some explanation.

Mr. Deyo — Mr. President, I hope that this Convention will grant the excuse asked by Mr. Unger for Saturday. His duties in connection with the synagogue, I happen to know, require his absence.

Mr. Unger — Mr. President, I have made an explanation to General Wickersham which is satisfactory to him.

Mr. Dahm — Mr. President, I move that General Wickersham go around to each individual member of the Convention and impart to them the information received from Mr. Unger.

The President — All in favor of excusing Mr. Unger for Saturday will say Aye, contrary No. The Ayes have it and the excuse is granted.

Mr. Vanderlyn — Mr. President, during the last few days I have been attending this Convention I have been indisposed. I can attend probably Monday and Saturday, if possible. But, if feeling no better than I do now, I appeal to this Convention to excuse me Saturday and Monday, and I state that if able to attend, notwithstanding that excuse, I will be here on either or both of those days.

Mr. Wickersham — Mr. President, I move that the delegate be excused as requested.

Mr. President — All in favor of granting the excuse will say Aye, contrary No. The excuse is granted.

Mr. Wickersham — I move that the Convention go into Committee of the Whole for the consideration of Special Orders, beginning with No. 45.

The President — All in favor of the motion will say Aye, contrary No. The motion is agreed to. The Convention will go into Committee of the Whole. Will Mr. Lincoln take the Chair?

(Mr. Lincoln takes the Chair.)

The Chairman — The Convention is in Committee of the Whole on Special Order No. 45.

The Secretary — By Mr. Blauvelt: To amend Article VII, by adding a new section relating to highways.

The Chairman — What is the pleasure of the Committee? Is there any debate upon the motion of Mr. Blauvelt? If not, the question is pending.

Mr. Sanders — I offer the following amendment:

The Chairman — The Clerk will read the amendment offered by Mr. Sanders.

The Secretary — By Mr. Sanders: Strike out lines 4 to 9 inclusive of page 1 and lines 1 to 5 inclusive of page 2 and insert in place thereof the following: Section 13. The State Commission of Highways shall reapportion among the counties of the State containing towns all the funds arising from the proceeds of the sale of highway bonds heretofore authorized to be issued which have not been expended and which are not necessary to pay for the construction of highways for which contracts have been made, pursuant to law, in such manner that each such county, so far as possible, shall receive out of the funds provided by the State heretofore expended and hereafter available for expenditure for highway construction a sum equal to the sum to which such county would have been entitled if all such funds had been apportioned in the manner prescribed in section 4 of chapter 298 of the

Laws of 1912. The funds so apportioned to each county shall, so far as necessary for that purpose, be used for the completion of the routes of the State highways described in section 5 of chapter 298 of the Laws of 1912, if any thereof remain uncompleted within such county, provided that the State Commission of Highways may determine that any uncompleted portion of the route or routes of such State highways within such county is not essential to the general plan of State highways as established by law and dispense with the building thereof; the remainder of the fund so apportioned shall be available for the construction and improvement of county highways as defined in section 3 of the Highway Law.

Mr. Brackett — I move to strike out the enacting clause of the Blauvelt amendment for the purpose of an explanation.

Mr. Blauvelt — The purpose of my amendment is to authorize the Highway Commission to spend in its discretion towards the construction and completion of the State route system an aggregate of approximately two million, two hundred thousand dollars of balances arising in nineteen counties of the State, in which counties all of the State routes have been completed, all these balances occurring by reason of the apportionment of the second fifty million dollar bond issue to the counties of the State without regard to the amount of money which those counties would need for the completion of their State routes. In order to present the matter perhaps clearly to the Convention, it will be necessary to review briefly the history of the two bond issues, to show how it is that in certain counties of the State a balance exists after all the State routes are completed, while in other counties of the State there is a large deficit. The first bond issue for highway construction was authorized by Section 12 of Article 7 of the Constitution, which was adopted in 1905. It authorized the creation of an indebtedness of $50,000,000 for the improvement of highways, and provided that such highways should be determined under general laws and be equitably apportioned among the counties of the State. This Constitutional Amendment contemplated the construction and improvement of a permanent system of highways throughout the State and throughout all the counties, except in those counties of the State which had no towns. The highways to be so improved were required by the amendment to be equitably apportioned among the counties. The method of construction and improvement subject to this limitation was left to the discretion of the Legislature. In 1907 the Legislature, preliminary to the establishment of a State system of highways, provided for the appointment of a joint committee of both Houses to inquire into the subject. Their report was presented and adopted by the Legislature in 1908 and provided for a repeal of nearly all of the existing

highway laws and adopted a new highway code embracing in a comprehensive plan the entire subject of highway improvement. It created the present State Department of Highways, with full power to administer the law. The new law, which was chapter 330 of the Laws of 1908, classified the highways to be constructed or improved from the proceeds of the issue and sale of the bonds authorized by the Constitutional Amendment, into State and county highways, the former to be constructed solely at the expense of the State and the latter, the county highways, to be constructed partly at the expense of the State and partly at the expense of the county and town. In 1907, the Legislature anticipating the creation of this new system, made up a map of the highways of the State which should be improved out of the proceeds of these bonds. An official map was prepared by the state engineer and surveyor in 1908, adopted by the Legislature as the official map, and it provided for the creation of a system of county highways having a mileage of approximately 8,000 miles. Now, in 1908, when the present highway law was passed, there was added to this system of county highways, a system of State highways or trunk line routes having an approximate mileage of 3,000 miles — about 3,000 miles. Since that time there has been added additional State routes having a mileage of approximately 550 miles. In other words, there were apportioned to the various counties of the State 8,000 — approximately 8,000 miles of county highways to be constructed partly at the expense of the State and partly at the expense of the county and town, and 3,500 miles of State highways to be constructed wholly at the expense of the State.

Mr. Stimson — That first set of highways to be constructed partly at county and partly at State expense, the State's share was to come out of the proceeds of the authorized bond issues?

Mr. Blauvelt — Sixty-five per cent. of the cost must come out of the bond issue, and 35 per cent. out of the locality. Originally it was 50 per cent. and 50 per cent., later reduced by an act of the Legislature to 65 per cent. at the expense of the State, and 35 per cent. by the locality.

Mr. Stimson — But so far as the State contributed any money, that was to come out of the authorized bond issue?

Mr. Blauvelt — Yes. Now, in accordance with the provisions of the Constitutional amendment, the Highway Commission sought to make an equitable apportionment of the highways among the counties based upon road mileage rather than upon the cost of construction. Unfortunately, the Legislature did not provide for any fixed or definite scheme for distribution, but left to the discretion of the commission the determination of what constituted an equitable apportionment. The apportionment of State highways among the counties was, therefore, more or less of

an arbitrary one on the part of the commission. They were controlled in a measure by the general designation of the routes to be constructed, as applying to the State. To illustrate the apportionment: I refer now only to the State highways: Albany county was allotted 41 miles of State highway; Columbia county, 61 miles; Erie, 55 miles; Essex, 78 miles; Wyoming county, 45 miles; and so on. In the beginning no definite plan or policy was adopted for constructing a continuous mileage of highways, nor for an equitable annual apportionment of highways to be constructed in the county. Consequently, during the earlier period of its existence, the Highway Commission constructed many disconnected sections of highways throughout the State, and many counties received annually more than their equitable apportionment of State highways. This condition of affairs was greatly aggravated in 1910 and 1911, by the passage of laws providing for the so-called expedited routes. Under these various acts of the Legislature, the Legislature directed the Highway Commission to construct at great expense many miles of continuous highways without regard to any equitable apportionment thereof among the counties. And these acts obligated many millions of dollars of the proceeds of the sale of bonds for the construction of the expedited routes. At the time of the submission of the Constitutional Amendment in 1905, it was believed that the system of improved highways for the State could be constructed out of the proceeds of the sale of the fifty million dollars of bonds, but with the increased mileage provided in the Highway Law of 1908, the high standard of roads made necessary by the annually increasing automobile travel, it was found as early as 1910 that the contemplated system of county and State highways could not be constructed for fifty million dollars. In 1912, practically all the proceeds of the first bond issue had been obligated in the construction of less than six thousand miles of State and county highways. To meet the situation, the Legislature in 1912 passed the so-called referendum act of that year, providing for the submission under section 4 of article 7 of the Constitution, of the proposition as to whether a further issue of fifty million dollars should not be made for the completion of the system. The proposition was adopted at the general election of 1912. The referendum act provided that, if ratified, thirty million dollars of the bond issue should be used in the construction of county highways and twenty million dollars in the construction of State highways. It also provided for the distribution of the proceeds of the issue among the counties according to three factors. Population of the county, its area, and the improved road mileage in the county as shown on the official map which had been prepared back in 1907,

and as amended down to the date of the submission of the referendum act. In other words, the referendum act provided for an apportionment of money among the counties instead of an apportionment of mileage to be constructed out of the proceeds of the bonds, as was provided in the Constitutional Amendment of 1905. In making the distribution of moneys under the referendum act to the counties an arbitrary apportionment was made of the moneys without regard to the number of miles of improved highways which had been constructed out of the first bond issue, and without regard to the money necessary to complete the State highways in the various counties as designated on the official map. By way of illustration, Albany county, which, as I have already said, was entitled to 41 miles of State highways on the official map prepared in 1907 and as amended had at the time of the submission of referendum act 12 miles completed or under contract and 29 miles still to be constructed. The counties' apportionment of moneys under the second apportionment for State routes was $427,114. Now it has been found by the highway department that the average cost of constructing the State routes is $13,000 a mile. On that basis, it is estimated by the highway department that there will be a surplus of $44,980 in the apportionment of moneys to Albany county after all of its 41 miles of State highways have been completed. Columbia county was entitled to 61 miles of State highways, of which, in 1912, 30 had been completed or were under contract and 31 were still to be constructed. Its apportionment of State moneys was $274,557. It is estimated that there will be 8.6 miles of State highways in Columbia county which cannot be completed out of the moneys apportioned to it; in other words, that there will be a deficit of approximately $112,840 necessary for the completion of the State routes in Columbia county. Erie county was entitled to 55 miles of State highways. In 1912, 13 miles had been completed or were under contract and 42 miles were still to be constructed. Its apportionment of State highways money was $1,113,762. It is estimated that in Erie county alone there will be a surplus of $412,740 after all the State routes in that county have been completed. Essex county was entitled to 78 miles of State highways. Its entire mileage was constructed out of the first fifty millions — the entire mileage of State roads. Nevertheless, it received in 1912 under the referendum act, $417,931, all of which is surplus money. Wyoming county was entitled to 45 miles of State highways, of which in 1912 only 6 had been constructed. Its apportionment of money was $217,383. It is estimated that there will be a deficit in that county of $368,940. Now the estimated aggregated surplus in 19 counties of the State, in the counties of

Albany, Cayuga, Delaware, Dutchess, Erie, Essex, Jefferson, Lewis, Monroe, Montgomery, Niagara, Onondaga, Orange, Orleans, Putnam, Ulster, Warren, Westchester and Yates, is $2,203,240. This applies to State highway moneys only and has no effect upon the distribution of county highway moneys, for there will be no surplus, I am told, in any county of the State, in the county highway money.

The aggregate deficits in the remaining counties of the State of moneys necessary to complete through trunk line routes is estimated by the highway department at $9,449,310. In other words, there are approximately 750 miles of trunk line routes, as shown on the official map and as amended, which cannot be built out of the $100,000,000 authorized. My purpose in this amendment is to authorize the commissioner of highways to use the $2,203,000 of State moneys arising in those nineteen counties and spend it in his discretion throughout the State to build, etc., approximately 200 miles of roads so placed as to complete the improvement of the State routes. The $2,203,000 will build approximately 200 miles of these 750 miles of roads, discretion being vested in the department of highways as to the location of those 200 miles of roads. I think it is safe to assume that the commissioner of highways in the administration of the work of that department and with his intimate knowledge of every route of the State will use that $2,203,000 on the improved State routes in such a manner as to complete a continuous mileage of roads throughout the State.

Mr. Lindsay — What effect will the taking of this excess and submitting it to the use of the highway commission have upon the construction of county roads where there is a deficit in the county? For example, suppose Niagara county — my county — has an excess in this fund. I understood the speaker to say that there would be no excess and perhaps a deficit in regard to the county funds. If this is taken away, will it not be more difficult to have the money necessary in the county fund to construct the roads on that principle?

Mr. Blauvelt — Not at all. The apportionment of county highway moneys to the various counties of the State will not be affected in the slightest degree by the use of these surplus State road moneys. Furthermore, this plan that I have worked out for the use of these surplus moneys will not take away from a single county in the State, from any one of these nineteen counties, a single mile of its State road to be constructed because before a dollar of this money is taken away from any of the nineteen counties every mile of State road must be completed in those counties. After those roads are all completed and the highway

department has determined the actual surplus arising in all the counties of the State, those surplus moneys should be used in other counties of the State where there is a deficit of State-route moneys, with a view to completing as many of these State routes as can possibly be built out of the $100,000,000. Unless some relief is given by this Convention and by the people, approximately only $47,800,000 of the second $50,000,000 bond issue can be spent in the construction of roads. Instead of having $100,000,000 of bonds issued for highway improvement, only $97,800,000 can be used. That is because no part of these surplus moneys can be used under the referendum act, which has the force and effect of a Constitutional amendment, on a single mile of county highways. Nor does it permit the use of a single dollar of those surplus moneys for new State routes to be laid out for the purpose of absorbing or using this money because of the limitation that was placed in the referendum act, limiting the use of the moneys to the State routes actually created and in existence at the time of the submission of the referendum act as defined in the Highway Law and the acts supplemental thereto down to the date of the submission, so that, unless something is done by this Convention, the comptroller will never issue more than $97,800,000 of the two issues of bonds — approximately that. Of course, we cannot tell perhaps within $100,000 or $200,000 of what the roads are actually going to cost. This is estimated on a basis of $13,000 a mile.

Mr. Stimson — The gentleman has made a distinction between county and State routes. The county roads were not laid out, as I understand it, with reference to any State-wide plan?

Mr. Blauvelt — No, they were laid out in this way, Mr. Stimson: After the adoption of the constitutional amendment in 1905, and in anticipation of the passage of the general law therein referred to, the Legislature authorized the State Engineer and Surveyor to make up an official map of county highways to be constructed out of that money and directed the State Engineer and Surveyor to get in touch with boards of supervisors and county engineers of roads to find out what each county would want and what roads they might want to have improved or constructed out of this bond issue, on a basis of 50 per cent. paid by the State and 50 per cent. by the county. The result was that the boards of supervisors and county engineers of roads certified to the State Engineer and Surveyor a mileage of highways in excess of what they should have received. No thought was given to any comprehensive scheme of State highways; it was limited to county systems of county highways. When the Legislature of 1908 provided for the system, under the general law authorized to be

passed by the Constitutional amendment, the Legislature added to that system of county highways a system of State highways to be built wholly at the expense of the State.

Mr. Stimson — The plan of which was to secure through routes as distinguished from local routes?

Mr. Blauvelt — The act of 1908 provided for thirty odd State routes, having the boundaries or the objective points — the point of beginning and the point of ending — designated in the statute, and the general direction of the route specified in the Act. To those routes specified in the Act of 1908, the Legislature subsequently added several additional routes prior to the submission of the referendum act.

Mr. Stimson —Am I correct in understanding that the gist of your proposal is that the surplus money in the counties which received an excess over and beyond what they were entitled to for county highways shall be applied solely to State roads?

Mr. Blauvelt — Well, it is hardly that, Mr. Stimson. It has no relation whatever to the county highways. Under the Act of 1908, the Legislature accepted the county highway system, you might say, which the State Engineer and Surveyor had placed on this official map that I have referred to. It then added the system of State routes. The highway commission was authorized to apportion annually the mileage which the department should build of both county highways and State highways. Now out of the first $50,000,000, certain counties received a preference, certain counties of this State had a great many miles of county highways built out of the first bond issue and as I have pointed out in one county alone one hundred per cent. of State routes were built out of the first $50,000,000, without regard to any equitable apportionment of roads either of county or State highways. Now all I seek to do is, of the surplus moneys arising out of the second bond issue, these two million, two hundred and odd thousand which is surplus moneys arising out of the proceeds of sale of bonds, out of the second bond issues, is to take those moneys and use them in those counties where their State route system is unfinished.

Mr. Marshall —And on State routes?

Mr. Blauvelt — On State routes?

Mr. Stimson —And the difference between yours and the amendment offered by Mr. Sanders would be that he would use those moneys on county roads.

Mr. Blauvelt — The Sanders proposal, as I take it, would reapportion all of the unexpended portions of both State routes and county highway moneys approximately thirty-five million on the basis of the apportionment made under the referendum act of

1912. The moneys thus apportioned to each county to be spent, first, for the completion of the State routes in those counties, and, second, for the construction of county highways. In other words, Mr. Sanders would take all of the unexpended portions of the first and second bond issues, moneys, both for county highways and State highways, as I have said, about $35,000,000 and reapportion it without regard to the plans of the State highways department or boards of supervisors and civic associations who have laid out county highway systems for construction. It would follow, from computations made by the highway department, that the counties of Erie, Monroe, Albany, Onondaga, Westchester, and others having a high ratio of population, area and mileage would receive hundreds of thousands of dollars in excess of what they would be entitled to receive if nothing is done, while certain other counties, Greene, Delaware, Livingston, Warren, Essex, Montgomery and others, having a low ratio of area and population and road mileage, would lose large sums of money. As I look at the Sanders proposal, the whole highway situation of the State would be disturbed. We will be starting back just where we were in 1908, right over again, with all the plans, as I say, of boards of supervisors, of county engineers, of automobile associations, and those public minded citizens who have been aiding in working out a comprehensive system of county highways would all be up in the air and we would be starting over again just where we were in 1908.

Mr. Schurman — I understand, Senator Blauvelt, your proposal refers only to the moneys received from the second bond issue? I also understand your proposal refers only to State routes. Now, if the highway commission had known in the year — was it 1912 when they made the apportionment?— If the highway commission had known in 1912, when it made the apportionment to the several counties, precisely what the roads to be constructed in those counties would cost, then they would not have apportioned to the 12 or 14 counties concerned, two and a quarter millions more than they actually needed to finish the State routes in those counties, but they would have apportioned that to the remaining counties of the State; and the object of your Proposed Amendment is not to bring about that result. Am I right?

Mr. Barnes — That is correct.

Mr. Blauvelt — Correct, so far as the result is concerned; but it was not their fault, it was the fault of the Legislature that established the rule.

Mr. Schurman — I am not seeking to put fault on anyone but to understand the situation. You propose to do by this amendment what the authorities of the State would have done in 1912 if they had had in their possession the facts.

Mr. Blauvelt — I think so, I think that is a safe estimate.

Mr. Marshall — Will the gentleman yield to a question merely for information? How or by whom is the excess to be determined? You speak of excess sums resulting from the sale of highway bonds and that excess is to be reapportioned, but there is nothing to indicate in the measure as to the manner in which that excess is to be determined, or the particular official or board.

Mr. Blauvelt — It would work out this way, Mr. Marshall, and we will take in the case of Albany county which is the first one on this schedule which I have. Albany county was entitled to 41 miles of State roads; 17.46 miles of road have been built, and the exact cost is now known of those 17.46 miles. It still has to build 23.54 miles. The exact surplus in Albany county cannot therefore be determined until all of this 23.54 miles of roads have been completed, and the Comptroller, the auditor of the Highway Department and the Comptroller's office will then be able to certify just what the surplus in Albany county will be, the Comptroller's office knowing the precise apportionment which was made to Albany county in 1912.

Mr. Stimson — Well, Mr. Chairman, should not the measures refer to a certification by the Comptroller or some other proper State official as to the existence or nonexistence of such excess? I think, in order to make it operable, to avoid any controverted statement of facts, there should be a determination by somebody in authority of that jurisdiction.

Mr. Blauvelt — I think that would follow in regular course of the business of the State. I don't know at this time who the State officer will be to certify. We do know, however, that all of the expenditures made by the Department of Highways on the contracts, and every draft that has gone to meet payments on these contracts must be certified by the State Comptroller. It is not necessary to write in the precise steps, to determine the exact amount of the surplus. The balance shown on the Comptroller's books, after all the roads are built in Albany county will be sufficient to determine the amount of surplus moneys in that county and the Comptroller is the officer authorized to issue and sell the bonds to provide the funds for all the roads in Albany county.

Mr. Low — Have you figures showing how this act or proposed amendment would affect the county of Washington?

Mr. Blauvelt — Washington county, it is estimated, will need $113,230 to complete its State route. If this proposition goes through and Washington county has an important unfinished State route, the chances are Washington county will get some portion of this surplus State route money spent for their plan.

Mr. Low — And your estimate of their apportionment balance is to be $113,000?

Mr. Blauvelt — It will need $113,000 to complete your quota of roads. Nine and a half million will be needed to build all the remaining, and Washington county cannot hope to get —

Mr. Vanderlyn — Mr. Blauvelt, what is the condition in Oswego? What do you make the surplus in that county?

Mr. Blauvelt — $208,000. Not one dollar of the $208,000 can be spent in that county or any other county of the State, without constitutional provision. You lose nothing by this amendment of mine, absolutely nothing.

Mr. Leggett — Now, as compared with the other propositions, under Mr. Sanders' proposition, would the final result be that the whole $100,000,000 be distributed on the same basis as the second $50,000,000?

Mr. Blauvent — Under the Sanders amendment the $35,000,000 county highway and State highway moneys would be reapportioned among the counties of the State according to the three factors of area, road mileage and population in each county, and without regard to the roads already built in those counties.

Mr. Leggett — Would that result finally in each county receiving the same sum that it would have received if the whole $100,000,000 had been distributed on that same basis?

Mr. Blauvelt — I have some rough figures here, Mr. Leggett.

Mr. Leggett — I thought you could answer generally.

Mr. Blauvelt — Some counties will neither gain nor lose any substantial amount. Counties having a high ratio of area, population and mileage will get an increased amount of money at the expense of certain weak counties who, having a low ratio of area, population and road mileage, over what would happen if nothing was done by this Convention. In other words, the county of Erie, it is estimated on Mr. Sanders' proposal, would get approximately $800,000 more than it would receive if nothing was done. Greene county would lose $197,000, by the Sanders proposal, of county highway money. Delaware loses $125,000 by the Sanders proposal. Livingston would lose approximately $280,000. Allegany would lose $119,000.

Mr. Leggett — I beg your pardon, but I did not ask that question. I asked the question whether if the Sanders proposal was adopted and carried out, would each county then have received its proportion of the hundred million on the same basis on which the second $50,000,000 was distributed?

Mr. Blauvelt — No.

Mr. Leggett — Wherein would it fail?

Mr. Blauvelt — Because under the Sanders proposal it is sought to apportion the $35,000,000 of bond issue money that has not been spent. Now, out of the first $50,000,000 issue of moneys in

the inequitable apportionment rule followed by the highway department, some counties got, we will say, but 6 per cent. out of the first $50,000,000. Other counties got as high as 100 per cent. of their routes built out of the first $50,000,000. Now, as I understand the Sanders amendment there is no attempt to equalize the inequalities up to the time of the referendum of the $35,000,000 unexpended money. In order to do that, in order to get equality, those counties that have received 100 per cent. or 90 per cent. or 80 per cent. would have to repay in order to bring about equality, but that is not sought to be done. They would keep what they have out of the first $50,000,000, and out of the $15,000,000 of the second bond issue money that has been spent, keep that and then the remaining $35,000,000 put that into a pot and reapportion it without regard to what they would receive —

Mr. Leggett — That answers my question.

Mr. Marshall — Mr. Chairman, I offer the following amendment.

Mr. Tuck — Mr. Chairman, if that may be withheld a moment, I would like to make an inquiry of the gentleman. In describing State and county highways I understand you to state such highway is to be entirely at the expense of the State?

Mr. Blauvelt — That is the definition of State highways.

Mr. Tuck — I understood you to say that. Now, is it not a fact that in this scheme of highways which you have described as State highways there have been included a number of highways constructed 50 per cent. at the expense of the localities?

Mr. Blauvelt — That is true, and I will explain how that happened if you want me to. Prior to 1898 the State had not built any nor lent its aid to the construction and improvement of any highways.

It embarked in the scheme of aiding counties in 1898 by the passage of the Higbie-Armstrong Act, providing for annual appropriation as an aid to counties on the basis of 50 per cent. to the counties and 50 per cent. to the State for the construction of a system of State roads and that was the foundation, the real reason why the constitutional amendment was submitted in 1905. Under that scheme, between 1898 and 1908, when we began spending the proceeds of the sale of the bond issue, 570 miles of highways were built partly at the expense of the State and partly at the expense of the locality. Now, in 1908, when the present Highway Law was passed, the highway department in its enumeration in the act of the State roads to be constructed at the expense of the State, took a portion of the 570 miles which had been built partly on account of the State and partly on account of the county and incorporated them in the State route system, but from 1908 down

the counties have not contributed a single cent to the construction of State routes.

Mr. Tuck — So that in determining in any county the surplus or excess to which you refer on the construction of State roads — roads now called State roads which formerly were constructed 50 per cent. at the expense of the county?

Mr. Blauvelt — Well, there are a few. A few counties did, partly at their expense, build a mileage of roads which were thereafter included in the State route system. My county was one that built several miles of very expensive roads as a county proposition under the Higbie-Armstrong Act, which were later included as part of the State routes enacted in 1908.

Mr. Tuck — So, in determining that excess, the county which has so done, as compared with the county which has not so done, is placed at a disadvantage, in your measure?

Mr. Blauvelt — It may be or it may not be; for if you seek equality, go into Allegany which only got about 6 per cent. of its highways built out of the first $50,000,000 and when the second bond issue was authorized no attempt was then made to bring about any equality as to Allegany county or those other counties which did not receive what they were equitably entitled to. The only way to approach this subject on a strong and equitable basis is to take $100,000,000, the authorized issue, and appropriate that throughout the State according to some fixed rule, and then any county that has received — already received a sum in excess of what that equalized amount should be, to come in to the comptroller and deposit that surplus in cash, I am willing to stand for that proposition. But you cannot do that. A county that got 100 per cent. of its roads built out of the first $50,000,000, and another county that only had 6 per cent. of its roads built out of that first $50,000,000, is not going to repay anything to bring about an equality, or do justice to the county that got a very small road mileage constructed. And so you cannot approach it from the point of view of seeking to equalize these inequalities that crept in back in 1908 to 1912.

Mr. Meigs — Senator, I am very ignorant about this whole highway matter; but in Franklin county we have a certain system of county roads. Now, would you tell us in Franklin county — What effect will your Proposed Amendment have on the highway conditions of Franklin county?

Mr. Blauvelt — It does not affect Franklin county at all. I think I am safe in saying, Mr. Meigs, that so far as Franklin county is concerned, it has not taken advantage or spent any part of the apportionment to it of county highway moneys under the referendum act of 1912, because it, along about 1911, determined

to build its own county highway system as a county highway expense, and it did not want the State to build any portion of its county highways; but under the second —

Mr. Meigs — We had no money from the first apportionment.

Mr. Blauvelt — Yes, you did. I don't know what mileage you did get. Wait a minute. Of county highways, Franklin county on June 1st had eleven miles of State roads built — of trunk line roads built.

Mr. Meigs — Eleven miles?

Mr. Blauvelt — Yes; 11.6 miles. And it had 41 miles of county highways built, and those 41 miles, if I am not mistaken, were all built out of the proceeds of the first bond issue.

Now, on its State route system, Franklin county was allotted 70 miles of State routes, trunk line roads. It had built March 1, 1915, 16.2 of those miles, actually constructed, leaving 53.75 miles to be constructed. Its apportionment of trunk lines moneys under the referendum act was $333,409. There will be a deficit in Franklin county of $360,000 necessary to build its 70 miles of road, so that it does not lose one single cent of money by this plan, and it may get some part of $2,200,000 surplus to be put back there to help finish its —

Mr. Meigs — County roads built for the county system.

Mr. Blauvelt — Since 1911, practically all of your county highways in Franklin county have been built as a county proposition by the issuance and sale of county bonds to the extent of about $500,000, I think.

The Chairman — The Secretary will read the amendment by Mr. Marshall.

The Secretary — By Mr. Marshall. After the word "some" in line 8, page 1, insert the words "to be determined by the comptroller".

Mr. Austin — Mr. Chairman, if I may say just one word upon the subject, and that is, it seems to me that—at least some of us are approaching this question from the wrong angle. Now, although I am not a member of the public utilities committee, I was interested in this highway situation, and I took it upon myself to attend several meetings of the committee at which hearings were held upon the various propositions which were before it. I am frank to say that I became thoroughly satisfied that the proposal of Senator Blauvelt was the only equitable proposal before that committee. Now, as I said, it seems to me some of us are looking at it from the angle of how much money will our county get by this proposal, or how much money will we lose. Now, to my mind, it is not a question of equalizing the distribution of this money at all. It is simply a question as to whether or not we will build

a comprehensive system of highways. Now, these State routes have been laid out with a definite idea in mind, making them connect up in a comprehensive system to which should be added for local purposes the county highways which are not supposed to serve as the main arteries of the State, but to serve particular communities. We now find ourselves in the situation where in the laying out of this comprehensive system, the State has said to one county, "Fifty miles of this comprehensive system should be built in your county to connect up with the other parts of this comprehensive system. But in apportioning the moneys to build those fifty miles we have erroneously given you only enough to build twenty-five miles," while we have said to some other county, "In order to construct this comprehensive system of highways, you should have fifty miles of State highways, but in apportioning the moneys to build that system, we have erroneously apportioned enough to build seventy-five miles of highway." Now, without some action by this body, as Senator Blauvelt has said, that extra twenty-five per cent. in the latter class of counties cannot be used at all. So we then have left the simple question as to what is the fair thing to do with this surplus. Now, it is not a question of whether Greene county, or Ulster county, or some other county shall get fifty or seventy-five thousand dollars of that money. The question is, or should be, shall we continue the construction of a comprehensive system of highways, and use this surplus which will be insufficient to finish the system in any event — which will be insufficient in any event — shall we use that money to construct that portion of the unconstructed State system of highways which needs that money the most, no matter what county it is in? Now, that, it seems to me, is all there is in this proposition. And I, for one, am heartily in favor of it.

Mr. Vanderlyn — May I ask, Mr. Chairman — I ask simply for information. Now, here is money that — a surplus of money, for instance, in Ulster county; what if neither the amendment of Senator Blauvelt nor the amendment of Mr. Sanders is adopted? What becomes of that money?

Mr. Austin — It simply cannot be used at all.

Mr. Vanderlyn — You mean it is tied up absolutely?

Mr. Austin — That money would have to be raised by the sale of bonds. It would be a portion of a bond sale. Now, if this or some other amendment is not passed, no bond will be sold to raise that money, because it cannot be spent, and that surplus will not be spent in Ulster county, nor will it be spent anywhere else.

Mr. Fancher — In other words, your idea is to utilize this surplus money for the benefit of the whole State?

Mr. Austin — And not for one county.

Mr. Fancher—And not for some one county. How much, may I ask, does Erie county get more by this increase, please?

Mr. Austin — That I could not tell you. Mr. Blauvelt will have to answer that.

Mr. Blauvelt — Under the Sanders proposal it is estimated that Erie county would get approximately $800,000 more.

Mr. Fancher — That is what I thought.

Mr. Sanders — Senator Blauvelt in his explanation of this bill has pointed out two wrongs existing in connection with the construction of State highways. The first is the impossibility, as matters stand at present, of completing the State routes; the second is the inequality which accompanied the distribution of the highway funds appropriated by the State for the building of State and county highways. The first fifty million dollars, as Senator Blauvelt has said, was appropriated by a direct constitutional provision that said that the moneys appropriated should be apportioned equitably among the counties of the State, but it laid down no rule by which to determine the manner of making that apportionment; and the result was that there was a scramble for funds, and, as the Senator told you, there was an absolute inequality in the distribution of the first fifty millian dillars. When it came to the appropriation of the second fifty million dollars, in 1912, the Legislature wrote into the appropriation act a provision that the money should be apportioned among the counties in proportion to population, area and road mileage, giving to each factor equal weight. Now, that is the only rule of apportionment that has ever been adopted in this State for the purpose of distribution of highway funds, and, so far as I know, none other has ever been suggested. So we are at least justified in assuming that that is a fair rule by which to apportion funds. The second fifty million dollars has been apportioned by the Commissioner of Highways in accordance with that rule and by reason of the fact that some counties received much more than their proportion out of the first fifty million dollars there is more than enough money to complete the State routes as a result of the amount apportioned to those counties out of the second fifty million dollars. Senator Blauvelt's proposal corrects that. It takes away the moneys apportioned to certain counties which cannot be used for the construction of State highways by reason of the fact that all of the highways are completed or will be completed considerably inside of the apportionment, and provides that the remainder may be applied to the construction of State routes in other counties. Now, that is all right as far as it goes, but it leaves absolutely untouched the greater evil of the two that we find in the situation, and that is the unequal distribution of the first fifty million dollars. My amendment proposes substantially that the whole one

hundred million dollars be put into a pot and that the rule laid down in the referendum act of 1912 be applied to the apportionment of the whole one hundred million dollars; that after each county's portion is determined by the application of that rule, that the amount which it has already received for county and State routes be deducted for the purpose of ascertaining the amount to which the county is still entitled. That, you can readily see, would have the effect of correcting the inequalities that have taken place in the distribution of the highway funds. Now, for the purpose of accomplishing the object which Senator Blauvelt's proposal will accomplish, I provide that, of the amount to which each county is entitled out of the remainder, the State highway routes within the county shall first be completed, and that the remaining moneys shall be applicable to the construction of county highways within those counties. I want to call attention to a few figures which appeared upon a tabulated statement which has been furnished to the Convention by the Department of Highways.

Mr. Stowell — How long is it since there has been any construction of highways under the so-called county plan?

Mr. Sanders — The construction of county highways is going forward at the present time. There is no county plan except the general —

Mr. Stowell — I don't mean State highways provided under the second fifty million dollar plan, but I mean the highways provided under the first fifty million dollars.

Mr. Sanders — There was a certain portion of the second fifty million set aside for county highways, and that is going forward now all the time. Now, there are nineteen counties to which there have been apportioned more than was necessary to complete the State routes, and the amount of surplus in each of these counties is as follows:

Albany	$44,000
Cayuga	2,700
Delaware	58,000
Dutchess	47,000
Erie	371,000
Essex	149,000
Jefferson	59,000
Lewis	285,000
Monroe	229,000
Montgomery	32,000
Niagara	186,000
Onondaga	56,000
Orange	30,000

Orleans	$13,000
Putnam	26,000
Ulster	144,000
Warren	208,000
Westchester	216,000
Yates	38,000

Mr. E. N. Smith — What do your figures mean, if I may ask?

Mr. Sanders — These figures are the amounts of money that will remain out of the second fifty million appropriations apportioned to each of those counties, applicable to the construction of State highways after the State highways, State highway routes within the county are completed.

Mr. Tuck — Mr. Chairman, may I ask the gentleman whether those are the amounts which under Senator Blauvelt's measure would be taken from those counties and spent anywhere in the State that the State may desire?

Mr. Sanders — Exactly. The total of those figures is a little over two million dollars, but the amount of deficit in the other counties of the State now necessary to construct the State routes in those counties amounts to $9,449,000. Now to take care of that situation Senator Blauvelt's bill provides that the commissioner of highways may dispense with the construction of parts or stubs of State routes where they can be dispensed with and still maintain the integrity of the State system of highways. But even that provision will be insufficient to take care of the situation. After dispensing with all of the parallel routes and spurs there will still be a large portion of the State routes which cannot be completed. My proposal contains a simple provision and the figures which I have as to the working out of my plans show that, that the power given to the commissioner of highways, properly exercised, will solve the whole situation, because the amount that is applicable to the construction of State and county highways in each county is fixed and can be determined by computation, using the rule laid down in the referendum act of 1912. An application of that rule, under my proposal, will make it possible to complete the entire State highways. It will be necessary only to cut out in nine counties a small amount of road, in each case, a spur, or a parallel road which can be done, without injuring the system. And, of the counties, which have a surplus, the list of which I have cited, I find that ten received less than their proportion under the distribution of the first fifty million dollars. So that after receiving less than their proportion of the first fifty million dollars, due to the operation of the statutes, as they stand at the present time and under the constitutional provision, they

receive less than their proportion under the distribution of the second fifty million dollars. The State Department of Highways has furnished me figures showing how the operation of my plan will affect the different counties in the State, and I would like to read these figures into the record. The following counties will receive more money, if my plan is adopted, in the following amounts:

Albany	$309,000
Allegany	119,000
Broome	4,900
Cattaraugus	247,000
Cayuga	176,453
Chautauqua	426,547
Chemung	4,775
Clinton	101,876
Cortland	112,280
Dutchess	28,832
Erie	872,895
Franklin	582,071
Fulton	215,875
Genesee	184,026
Hamilton	125,335
Herkimer	201,405
Jefferson	119,258
Lewis	312,985
Madison	98,659
Monroe	661,078
Nassau	417,263
Onondaga	118,258
Ontario	188,391
Orange	84,196
Orleans	124,491
Otsego	219,141
Rensselaer	201,473
Rockland	19,420
St. Lawrence	506,671
Saratoga	165,099
Schenectady	140,162
Schoharie	80,345
Steuben	165,522
Suffolk	390,913
Sullivan	109,630
Tioga	72,276
Ulster	377,510

Washington	$212,118
Wayne	285,632
Wyoming	315,748
Yates	9,569

Now the counties that will lose by the operation of my plan are as follows, giving first the amount the county will lose under my plan and then the amount which the county received out of the first fifty million dollars bond issue, more than it was entitled to, on the basis of the rule laid down in the act of 1912:

	Loss under my plan	Excess under first bond issue
Chenango	$61,000	$119,000
Columbia	189	24,000
Delaware	131,000	182,000
Essex	284,000	541,000
Greene	195,000	243,000
Livingston	278,000	205,000
Montgomery	176,000	203,000
Niagara	161,000	201,000
Oneida	173,000	167,000
Oswego	163,000	280,000
Putnam	319,000	349,000
Schuyler	32,000	63,000
Seneca	36,000	67,000
Tompkins	264,000	376,000
Warren	123,000	179,000
Westchester	73,000	141,000

Mr. Franchot — Will you please tell me whether under your scheme there will be required a payment from any county back to the State of money which it has received inequitably?

Mr. Sanders — There will not, because counties that receive more than their share out of the first fifty million will have that much taken out of their proportion of the moneys still remaining.

Mr. Westwood — Have you those figures?

Mr. Sanders — The figures I have been giving are approximately those figures.

Mr. Westwood — I mean the figures in answer to Mr. Franchot's question?

Mr. Sanders — I have been stating the amounts which would be deducted from the portions still remaining of the apportionment in the various counties.

The Chairman — The gentleman may recall that certain parliamentarians have ruled that the Chair should be addressed before inquires are made.

Mr. Westwood — What I understood Mr. Franchot to ask was whether or not any of the decreases in any of these counties would be so large that they would have to contribute back into the general fund moneys that they had already expended. Wasn't that it?

Mr. Franchot — Mr. Chairman, if the question was addressed to me, I would say that that is somewhat of an embroidery of my question. My question was a very simple one.

Mr. Westwood — My understanding is that no county has received so much out of the second $50,000,000 as to make it necessary to have to pay back into the general fund any moneys under Mr. Sanders's plan.

Mr. Sanders — That is the fact, as I understand it.

Mr. Franchot — Will you please tell me whether or not this summarizes your plan and that of Senator Blauvelt's; that under Senator Blauvelt's plan all of this unexpended surplus must be expended upon State highways, whereas under your plan a portion of it is to be expended upon county highways?

Mr. Sanders — It may work that way in certain cases. Counties which have a surplus arising out of the distribution of the second fifty million and which did not receive their proportion of the first fifty millions, instead of having that surplus taken away from them will have it expended within that county, and it may be expended for the construction of county highways if the State routes are completed.

Mr. Austin — Can you tell me what proportion Erie county received out of the first fifty million? Was it in excess?

Mr. Sanders — It did not receive its proportion. I can give you the figures. Erie was entitled under the rule laid down in the act of 1912, out of the first fifty million, to receive $2,784,000. There was actually expended out of the first fifty million in Erie county, $1,988,000.

Mr. Austin — Was that the only rule of distribution? Is that the same computation that you have applied to the other counties where you state they had received more than their share?

Mr. Sanders — Absolutely the same rule.

Mr. Austin — The same computation?

Mr. Sanders — Yes.

Mr. Stowell — Under what rule have you estimated that the county of Oswego, out of the first fifty million, received some two hundred thousand dollars more than it was entitled to?

Mr. Sanders — I have taken the figures furnished by the Department of Highways, which are computed by applying the rule laid down in the act of 1912.

Mr. Stowell — That is, the rule which you applied was put into effect a number of years after Oswego county received the $240,000, is that correct?

Mr. Sanders — I would not say a number of years after. Oswego probably received some of that money after the rule was adopted, but it was applicable only to the apportionment of the second fifty million.

Mr. Stowell — Well is there any authority of law now, except as we give it under your Proposed Amendment, for making the rule of 1912 applicable in any respect to the distribution of the first fifty million dollars?

Mr. Sanders — There is not. I have been applying it as the only rule of any kind that has been laid down, and one that has not been attacked as inequitable,— the only rule that there is to apply.

Mr. Stowell — At the time the first fifty million was distributed the counties which happened to be fortunate enough to get their applications in first got the appropriations?

Mr. Sanders — That is the fact. They were fortunate.

Mr. Wagner — Is there any way, Mr. Chairman, that we on this side of the Chamber can find out what is going on without leaving our places and joining the debating society over there?

The Chairman — The Convention will come to order and I think it will then be possible for you to hear.

Mr. Sanders — I might say that if the senator had been here a little sooner he would have been in the center of it over on the other side of the Chamber.

Mr. Blauvelt — Will your plan, if adopted, correct the inequalities that crept in under the expenditure of the first fifty millions; that is, will it seek to equalize the distribution of highways among counties, highways that were built out of the first fifty million?

Mr. Sanders — Yes, sir, that is one of the purposes of my proposal.

Mr. Blauvelt — In what way will it be done, may I ask?

Mr. Sanders — By reducing the amount to be apportioned to counties out of the remaining funds appropriated under the second bond issue to the extent that they receive more than their share of the first fifty million.

Mr. Mereness — It seems, from what I have heard, that we have been terribly slow in Herkimer and Lewis counties, and I would like to inquire of Mr. Sanders whether his proposal is to treat the whole hundred millions as a unit and endeavor by his plan to equalize the inequalities in the distribution of the first fifty millions?

Mr. Sanders — Yes, sir.

Mr. Mereness — As far as it is possible to do so?

Mr. Sanders — Yes, sir.

Mr. Mereness — Another question, if I may be permitted. I do not assume that it would be possible to compel any county that received more than its fair proportion of the first fifty million to refund any part of it. That can only be applied, as far as may be possible, out of the funds still applicable out of the second fifty million?

Mr. Sanders — I think it would be entirely impracticable to do anything of that kind.

Mr. Stowell — Is it suggested here that any of the counties received more than their fair share of the first fifty million? Were not all of those appropriations made under the sanction and color of law?

Mr. Sanders — Yes, sir. Senator Blauvelt, himself, in his argument, stated that there were inequalities in the distribution of the first fifty million and I have not heard any one dispute that assertion.

Mr. Stowell — But was there any violation of law as to any other part of the State?

The Chairman — May the Chair call attention to the fact that, owing to the confusion in the Chamber, it is very difficult for the stenographer to hear.

Mr. Sanders — I do not think there was any violation of law. I do know that the spirit of the Constitutional provision was not lived up to.

Mr. Stowell — Mr. Chairman, why do you say that?

Mr. Sanders — Because the Constitution says that the money should be equitably apportioned among the counties. It left it to the Legislature to exercise its judgment as to what was an equitable apportionment, and I say that the judgment of the Legislature in that respect was very bad.

Mr. Stowell — Therefore this is intended to correct that inequitable distribution by the Legislature?

Mr. Sanders — Yes, sir.

Mr. Vanderlyn — Mr. Chairman, do I understand that the figures which Senator Blauvelt has given and the figures which you have given as to the amounts that the respective counties have received more than you say they should have received, correspond?

Mr. Sanders — I think the figures Senator Blauvelt gave agree with mine. The source is the same in each case. I think he got his from the highway department. I also think we were talking about the same thing, and if that is so, of course they agree exactly.

Mr. Barnes — I should like to ask Mr. Sanders, inasmuch as it is now five o'clock, whether it would not be possible for us to agree to close this debate before we adjourn and have a vote on it, or do you wish more time? The Committee on Rules is about to bring in a rule in relation to it and we wish to have your suggestion in the matter.

Mr. Sanders — I offered an amendment to Senator Blauvelt's proposal. Senator Blauvelt's proposal is under discussion so I think the inquiry should be addressed to him rather than to me.

The Chairman — The Chair will state that this is a subject which seems to require individual inquiry as to the different counties; that that has been the procedure this afternoon in connection with this subject.

Mr. Barnes — I wanted to get a little light on it for the Committee on Rules, as to whether there would be very much more debate on this amendment.

The Chairman — The Chair would be very glad to have the same light.

Mr. Sanders — I know of two or three gentlemen who desire to speak; I do not know how many others there may be. As far as I am concerned, I have finished.

The Chairman — The question occurs upon the substitute offered by Mr. Sanders, which the Clerk will again read.

Mr. Blauvelt — I think it would be a great mistake to adopt the amendment offered by Mr. Sanders. I think it would be a mistake because it would set us back in the plan of the construction and completion of our system of highways by some considerable time. By that I mean that since 1908 boards of supervisors of counties, county engineers of roads, automobile associations, and civic societies, of various counties of the State have been working out and planning in their respective localities a comprehensive county system of roads and those roads have been placed upon the official map. Boards of supervisors have made application to the State Highway Commission for the construction and order of construction of those roads. In many cases counties have been obligated by authorizing the issuance of bonds for the completion of specific roads contemplated for construction. Under the Sanders plan, as I read the amendment we would stop right here and cancel everything that we have done, abandon all of the schemes or plans of county highway construction and of State road construction and go back to exactly where we were in 1908. We would then have to start in the process of outlining and building, with this $35,000,000 that is unexpended at this time — to revise and readjust the plan of county highways and State route construction. I do not think that the members of this Convention

— many of them — appreciate the great amount of work that has been done already by the highway department and by boards of supervisors in planning this system. Now the Sanders plan — I feel that I am competent to speak on the subject — would practically abandon everything that has been done up to the present time except the roads actually constructed and completed or under contract now, and then start over again. Where one county will gain by this plan of Mr. Sanders, some other county must lose. There is $35,000,000 for distribution. What Erie county, what Monroe county, what Westchester county and the other counties of the State may gain by the Sanders plan, some other counties have got to lose, and have got to lose the same amount of money in the aggregate that those counties gain. The counties that will gain by this plan are the counties that have a high ratio of population and mileage; the counties that are going to lose are the counties with a low ratio of area of population and mileage. Counties like Putnam, Columbia, and Delaware that have a sparse population are going to surrender money that they are now entitled to receive and give it to counties with a high ratio of population, such as Erie, Monroe, Onondaga and the rest. Is that equality? Is that equity? Putnam county can never go on and build another mile of road, in my opinion. Under the Sanders plan it has got to stop now and not build another mile of road. There are many counties in the State that will never be able to finish, anywhere near their State road system or county highway system, because, instead of getting a fixed sum, as now, knowing that they will be able to build, we will say, with that 60 per cent. of their road mileage — having that money now apportioned to them — they will have to surrender, as in the case of Putnam county, and not build another mile of road. Other counties, instead of being able to spend, we will say, $500,000, as estimated and apportioned to them now, may have under the Sanders plan only $200,000. The counties that are getting all the gain are counties that have the large cities, such as Buffalo, Rochester, Syracuse and the rest. The factor of population and of area, where those factors are high or have a high ratio, will prevail in the counties that are going to gain by this plan, and the weak counties will suffer. I will say, gentlemen, that my county will neither gain nor lose a substantial amount by the Sanders plan. I am thinking of those counties that need more money to complete the trunk line routes that have been laid out. These routes should be completed, as in Putnam county, Columbia, Greene, Delaware and the rest. We should not take away from those counties one dollar of the money that they are now entitled to receive and give it to some other county that really

does not need it. I speak feelingly on this subject. I think a grave injustice will be done to many counties of the State by depriving them of the moneys that they voted for in 1912. When that referendum act of 1912 was submitted there was an implied agreement with the voters of this State in the various counties that they would get a specific sum of money and the amount which was agreed to be given to them in 1912 had been actually apportioned to them by the State Engineer and Surveyor, Superintendent of Public Works and the Commissioner of Highways. Now, in 1915, you would take away from those counties what they were promised if they voted for the second fifty million, under the apportionment.

Mr. Tuck — Does not the Blauvelt measure do the same thing?

Mr. Blauvelt — The Blauvelt measure does not. There is a great difference, Mr. Tuck, between a county highway and a State highway. The one is a local proposition; the State highway is a State proposition, and no county is entitled, as a matter of right, to a cent of the trunk line moneys. It is entitled to the use of county highway moneys within the counties. The construction of a system of State roads, this system of 3,300 miles of State roads, is a State proposition, where all the people of the State are paying for it, and the State is entitled to have those roads built and the county has little to say about it. If the county gets the aid which the State has given to the county for county highway construction, it has got all that it is entitled to.

Mr. Tuck — Irrespective of whether the State has assumed by this State highway system jurisdiction over its roads, should the county pay for any part — pay fifty per cent.?

Mr. Blauvelt —As a condition for the State's contribution of fifty per cent. of the highway construction. The city of New York is paying nearly seventy-five per cent., not only of the State route system, but they are paying to the State seventy-five per cent. of the sixty-five per cent. that is being given to the counties in the way of State aid.

Mr. Donnelly —And the city of New York is paying 100 per cent. of the cost of its own highways?

Mr. Blauvelt — Yes, and the city of New York, in addition to providing for its own highways, the highways contained within the county of New York, is contributing seventy-three per cent. of this $2,200,000.

Mr. Clinton — Senator, I want to get a clear idea of this act, and, with your permission, I will ask you two or three questions. First, I do not understand, from what you have said, the necessity for a constitutional provision to equalize the moneys which have been expended and which remain to be expended on highways. I am simply asking why it is necessary.

Mr. Blauvelt — Why it is necessary? Because the referendum act of 1912 provided that the proceeds of the sale of fifty million dollars in bonds to be issued, if ratified by the people, must be spent upon roads then in existence, both State routes on the official map and county highways actually upon the official map, and did not permit the expenditure of any of that money upon newly created highways after the ratification of the amendment.

Mr. Clinton — In other words, what the people voted for as to the application of the moneys is to be changed by this Constitutional Amendment?

Mr. Blauvelt — By my Constitutional Amendment.

Mr. Clinton — I so understand.

Mr. Blauvelt — The people, under my Proposed Amendment, affecting $2,203,000 which cannot be spent now, would say, "Use that surplus in those counties that need more money to finish their State routes". Now, in the absence of such relief, the $2,200,000 can never be issued by the Comptroller.

Mr. Clinton — You mean the bonds?

Mr. Blauvelt — The bonds.

Mr. Clinton — I am simply asking as to the necessity of any constitutional provision.

Mr. Blauvelt — It is to permit this $2,200,000 to be used in highway construction. As it is now, it cannot be used.

Mr. Clinton — Now, Senator, if I understand you correctly, you construe this proposal of yours, that it reaches only to the appropriation and can cover only the appropriation of moneys, proceeds of bonds to be issued that are applicable to the State routes?

Mr. Blauvelt — Yes.

Mr. Clinton — Don't you think the language is a little bit broad for that?

Mr. Blauvelt — Well, in effect it will, Mr. Clinton, but it is so drawn that if in any county there was a surplus after all the county highways had been constructed, it would go also to make up this surplus for distribution; but the highway department assures me that no county has enough county highway money to finish its county highway system, and therefore there will be no surplus of county highway money.

Mr. Clinton — Let me call your attention to the language.

Mr. Blauvelt — But if by chance a single county has a surplus, it will be added to these $2,203,000 of State route surplus money.

Mr. Clinton — I am seeking for information. There are what we speak of as county highway moneys, provided for by the referendum of 1912, which have not been expended.

Mr. Blauvelt —Approximately twenty-five million dollars.

Mr. Clinton — Yes. I am not being captious, Senator, but I want to call your attention to the language: "Moneys authorized to be raised by the sale of highway bonds"— there is no limitation — "pursuant to the law approved by the vote of the people at the general election held in the year one thousand nine hundred and twelve" — "which have been apportioned to certain counties in excess of the sums which are or will be required to construct and improve the highways theretofore determined by general laws to be constructed and improved in said counties, shall be applied by the State commission", and so on. Now, that absolutely includes all moneys appropriated under the referendum act; no limitation upon it.

Mr. Blauvelt — It will take, Mr. Clinton, if you will excuse me — I am told by the highway department it would take about $40,000,000 more to complete the county highway systems.

Mr. Clinton — That is not the point I am making. There are $25,000,000 of county highway moneys not expended, and here you put those moneys by the terms of this —

Mr. Blauvelt — I don't, Mr. Clinton. I disagree with you, if you will read it. "The moneys authorized to be raised by the sale of highway bonds pursuant to the law approved by vote of the people at the general election held in the year one thousand nine hundred and twelve"— which was under the referendum act of 1912 —

Mr. Clinton — Yes.

Mr. Blauvelt — The moneys authorized to be raised "which have been apportioned to certain counties"—

Mr. Clinton — Yes.

Mr. Blauvelt — Now what? "In excess of the sums which are or will be required to construct and improve the highways theretofore determined by general laws to be constructed and improved in said counties"— that is, those roads that were in actual existence — "shall be applied", etc. Now the general laws referred to is the act of 1908 as amended down to the time of the submission of the referendum in 1912, and the general law then upon our statute book provided for certain State routes to be constructed, and certain county highways to be constructed. Now, in either event, where there is a surplus after all the county highways have been completed, after all the State routes have been completed, if there is a surplus in either, then that surplus may be used elsewhere in the State.

Mr. Clinton — Does the act of 1908 specify all the county highways to be constructed?

Mr. Blauvelt — How?

Mr. Clinton — Does the act of 1908 specify all the county highways to be constructed?

Mr. Blauvelt — The act of 1908 in substance accepts the official map which the State Engineer and Surveyor had completed in 1907, as showing the amount of mileage which each county was entitled to receive. That map was amended from time to time by additions down to 1912. Now, the map as it was in 1912 showed the aggregate mileage in each county, of its county highways, and also the mileage which it was entitled to of State routes. Now, that could not be added to or substracted from in the way of mileage, but it did permit of a relocation of a road, and a substitution of one road for another provided the mileage allotted to the county was not exceeded. You could not increase the mileage of roads, but you might relocate a road between objective points, provided you did not increase the mileage of the county in so doing.

Mr. Clinton — The point I am making is substantially the same as involved in the question of Mr. Marshall. It is that all these questions which are necessary in order to determine what moneys shall go into the hands of the Highway Commission, that are, in fact, surplus State route moneys, or surplus county highway moneys — you have provided no way in which those questions shall be determined, statute applied, and surplus ascertained.

Mr. Blauvelt — Mr. Clinton, there is a separate highway fund in the Comptroller's office for each county, for county highways and State highways. I am willing to accept the amendment of Mr. Marshall. I know the comptroller would have to certify it anyway. I am perfectly willing that it should be written in my amendment that the determination of the surplus should be made by the Comptroller. He would do it anyway. There is not any other State officer who could.

Mr. Clinton — That brings me to my last question. It seems to me something of that kind must be done with this statute. Under the constitutional provision, providing for the issuing of fifty million, I judge from what you say and from what knowledge I have of the circumstances, there was this general scramble by the different counties for as much of that amount as each county could get, and that the result of that was that gross inequalities arose.

Mr. Blauvelt — Yes; ranging from six to a hundred per cent.

Mr. Clinton — Yes.

Mr. Blauvelt — That was the range.

Mr. Clinton — I also understand that so far as the laying out of State routes was concerned, there were gross inequalities.

Mr. Blauvelt — Mr. Chairman, in reply to that I will say that so far as the location of State routes is concerned, with the exception of about five hundred miles, that was made by the Legislature in 1908 when the act was created.

Mr. Clinton — Yes.

Mr. Blauvelt — Now, I don't know what the situation was at that time. I was not a member of the Legislature, but I must assume that the committee which the Legislature appointed in 1907 and which gave weeks and months to the consideration of the subject, and which reported it to the Legislature in 1908, did report a pretty well-thought-out scheme of State routes in the State. It was upon that report that the Legislature in 1908 wrote into the statute the location of all but about five hundred miles of the trunk line route.

Mr. Clinton — Senator, you say you must assume that the inequalities in the laying out of the State routes as between the counties, which certainly exist, were taken care of properly by the act of the Legislature. Do you not remember the discussions at that time, and if you do, would that not relieve your mind of that assumption?

Mr. Blauvelt — I don't consider there were any serious inequalities in the allotment of the roads to the various localities of the State. The inequalities crept in in the annual allotment of highways to be constructed in counties throughout the State. That is, the allotment of highways I must assume was all right, to the various counties of the State, but the Highway Department could build annually but a small percentage of the aggregate of the roads. And so, when the Highway Department was given by the Legislature five million dollars to spend in any one year, the inequalities crept in in the distribution or apportionment of the annual five million dollar proportion to counties, so that one county got more in two or three years than another county got.

Mr. Clinton — That is not my understanding of it. You are aware, of course, that in some localities there are State roads running parallel to each other and that one result of that is that some portions of the State have not been able to get State roads?

Mr. Blauvelt — I think every part of the State has got State roads. I will show you the map.

Mr. Clinton — I will not stop for that, because I have one other question to ask you.

Mr. Blauvelt — This is the State route system. I think it is a pretty good net-work of roads throughout every county of the State.

Mr. Clinton — It looks very well on the map. I think, Senator, you don't appreciate the point to which I am getting. It leads up to this question: With all the inequalities of allotment of money in the laying out of State routes and the laying out or apportionment, rather, of county moneys, which arose before the passage of the referendum of 1912, in view of that do you think it is proper

to take all the surplus and put it in one pile as you say and then allow the commissioner of highways full powers that will enable him to determine where and when that money is to be expended?

Mr. Blauvelt — I simply deduct the surplus State route moneys. When I spoke of putting these moneys into a pot, I spoke of Mr. Sanders' proposition where he would take the $25,000,000 of unexpended county highway money, practically $10,000,000 of unexpended State route moneys, and put those two into a pot, aggregating about $35,000,000, and then start all over again and reapportion those moneys on the basis of the rule fixed by the referendum of 1912 and without regard to the inequalities which existed prior to 1912.

Mr. Clinton — Let me call attention to your own bill. You speak of the moneys, describing them, and you say they shall be applied by the State Commissioner of Highways to the construction and improvement of such State routes and portions thereof as were defined by law within such counties, etc. Don't you put that thing right back in the end to plan as their judgment sees fit on these highways?

Mr. Blauvelt — I authorize the State Commissioner of Highways, with the certification of the Comptroller, to take that $2,200,000 and build approximately 200 miles of the 750 miles of State highways that cannot be built without relief, and put that in the sections where he thinks it will do the most good: Five in Dutchess; three in Columbia; ten in Erie; one in Essex; in order to finish up and get some continuous highway mileage and not have these little sections here and there disconnecting the whole scheme. I don't know who else besides the Highway Department is able to determine the needs of the localities where the money can be most wisely spent.

Mr. Clinton — Let me just show how you can do it. You may do it by imposing, as Mr. Sanders' amendment does impose, a basis of apportionment. Mr. Sanders' amendment — I am speaking now to the amendment, if the Chair please — Mr. Sanders' amendment takes the surplus moneys that you speak of, gives you the basis of apportionment, which the people laid down in 1912.

Mr. Blauvelt — Mr. Clinton, it does not only that, takes the surplus $2,200,000, but it takes all of the $33,000,000 additional money that is applicable now apportioned to every county in the State in proportion to the factors and laid down in 1912. It takes all of that. That is not surplus moneys only, and starts over again with that. Now, I think that I have answered practically every question that I care to answer. If there is anything else that is of importance I will try to go into it.

Mr. Clinton — If the Chairman please, the question presents

itself here whether I shall go on speaking to this amendment or call the attention of the Chair to the fact that the hour for adjournment has arrived.

The Chairman — What is the statement of the gentleman from Erie? The hour of five-thirty having arrived, the Chair declares the Committee of the Whole in recess until 8.30 p. m.

Mr. Clinton — I understand, if the Chair please, I have the floor when we reconvene.

Mr. Brackett — Mr. Chairman, there is an important report that I want to hand up and have printed to-night. I prefer, if the Committee will go into convention and then ask leave to sit again this evening.

The Chairman — Senator Brackett, the Chair has declared the House is in recess. There is no way to resume.

Mr. Brackett — Well, Mr. Chairman, I move if there is no objection that Committee do now rise and ask leave to sit again upon the bill.

The Chairman — If there is no objection on the part of any individual, the Committee will resume, for the purpose of recognizing Senator Brackett on his motion.

Senator Brackett moves that the Committee do now arise, report progress and ask leave to sit again at eight-thirty. Those in favor of the motion will say Aye, opposed No. It is carried. (The President resumes the Chair.)

The President — The Convention will come to order.

Mr. Lincoln — The Committee of the Whole has had under consideration General Order No. 45, has made some progress, and asks leave to sit again this evening at eight-thirty o'clock.

The President — All in favor of granting the leave will say Aye, opposed No. The Ayes have it and leave is granted.

Mr. Brackett — Mr. President, I ask leave on behalf of the Committee on Legislative Organization to file a report involving the remaining sections of the article not already reported on. I will say in this connection that Mr. Burkan, who was called from the Chamber for a little time, asked that in connection with this report it may be noted that he requests leave until Saturday morning to file a minority report.

The President — The Clerk will read.

The Secretary — Mr. Brackett from the Committee on Legislative Organization to which has been referred various Proposed Amendments introduced by several members of the Convention, reports in favor of the annexed Proposed Amendment and recommends its passage: Proposed Constitutional Amendment to amend Sections 1, 2, 3, 4, 5, 7, 8 and 9 of Article III of the Constitution, and to transfer Section 6 of Article X into Article III.

Mr. Brackett — Mr. President, I do not believe any useful purpose would be gained by the Clerk reading the report entirely. I therefore, suggest and move that the reading be dispensed with. It will be on our files in the morning.

The Chairman — The Secretary will proceed with the second reading of the bill.

The Secretary — Second reading. Proposed Constitutional Amendment to amend Sections 1, 2, 3, 4, 5, 7, 8 and 9 of Article III of the Constitution, and to transfer Section 6 of Article X into Article III.

The President — Is there special disposition suggested of the report? Referred to the Committee of the Whole.

Mr. Brackett — Mr. President, may it be noted in that connection that Mr. Burkan will be permitted to file a minority report on Saturday.

The President — Is there objection to granting Mr. Burkan leave to submit a minority report later? The Chair hears none, and the leave is granted.

Mr. Wickersham — Mr. President, I move the Convention now recess until eight-thirty this evening.

The President — Without objection the Convention stands in recess until 8:30 this evening. Whereupon, at 5:40 p. m. the Convention took a recess until 8:30 p. m. the same day.

AFTER RECESS—8:30 P. M.

Mr. Rodenbeck — The Committee on Revision and Engrossment presents the following report:

The Secretary — Mr. Rodenbeck, from the Committee on Revision and Engrossment, to which was referred Proposed Constitutional Amendment by the Committee on Cities, No. 829, introductory No. 713, entitled, Proposed Constitutional Amendment. To amend Section 10 of Article VIII of the Constitution by dividing it into two sections to be known respectively as Sections 10 and 11, by amending the second part thereof and by adding a new section to be known as Section 12; also, Proposed Constitutional Amendment introduced by the Committee on Cities, No. 830, introductory No. 712, to amend Article XII of the Constitution, generally, in relation to cities and villages and their powers of self-government; also, Proposed Constitutional Amendment introduced by the Committee on Public Utilities, No. 832, introductory No. 706, to amend Article V of the Constitution, by adding a new section thereto relating to public service

commissions; also, Proposed Constitutional Amendment, introduced by the Committee on State Finance, No. 815, introductory No. 719, to amend Section 20 of Article III of the Constitution in relation to the appropriation of public moneys for construction purposes; also, Proposed Constitutional Amendment introduced by the Committee on Taxation, No. 834, introductory No. 679, to amend the Constitution by inserting a new article in relation to taxation, reports the same as examined, found correct and properly engrossed.

The President— The amendments, having been found properly engrossed, will be placed on the calendar for third reading. If there is no further special business, the Convention will return to Committee of the Whole for the consideration of the special order, General Order No. 45. Will Mr. Lincoln resume the Chair? (Mr. Lincoln resumes the Chair.)

The Chairman — The Convention is in Committee of the Whole on General Order No. 45.

Mr. Angell — Mr. Chairman. I have had occasion to give considerable attention to the proposed amendments which are now before the Committee of the Whole. I, myself, had an amendment before the Committee on Public Utilities which provided for another disposition of these surplus funds, a disposition different from that provided by the amendment offered by Senator Blauvelt or that provided by the Sanders amendment. That amendment, however, was not reported favorably by the committee, and I am not seeking to press that upon the attention of this Convention. I wish, however, to call the attention of the Committee of the Whole to what is proposed to be done by the Sanders amendment. We should first consider what the proposition was which was voted upon by the people in the referendum of 1912. When the people in that year voted to appropriate $50,000,000 for highway construction, they voted that 60 per cent of that should be for county highways and 40 per cent for State highways, that money to be apportioned by the highway commission, under the direction of officers specified, on the basis of mileage, population and area. After this had been done, it was found that certain counties, after building all their State highways, had a surplus, while other counties had not enough to complete their State highways. The Blauvelt amendment would permit this surplus to be used to complete the State highway system wherever most needed. The Sanders amendment would make the existence of this surplus in certain counties an excuse for an entire new apportionment of both State and county highway moneys and throw the whole system into confusion. We have no right to disturb the money for county highways which was voted by the people in 1912,

as the Sanders amendment proposes to do. We would have no right to disturb the money appropriated by the people in 1912 for State highways, were it not that certain portions of that money have become unavailable for use by certain counties, because all the State highways therein have been built, and there is a surplus. My own county has, under the appropriation made by the State Highway Commission, something like $150,000 for State highway purposes, but it has built all of its State highways, therefore this $150,000 cannot be used unless some way is provided by this Convention in the Constitution. Other counties are in the same situation. They have built all of the roads, all of the State highways, which they are entitled to build, consequently these surplus moneys which are credited to these counties cannot be spent by them, or applied to any highway purposes without some constitutional change.

Now it seems to me that to disturb the verdict of the people which has definitely appropriated certain sums of money for county highways and say this money shall be spent for State highways, is an act which this Convention is not called upon to perform. We have no more right to do that than to submit to the people the proposition to take for some other purpose the money voted some years ago for canal terminals. It would be ridiculous to suppose that we should vote to use that money for any other purpose, and it seems equally ridiculous to propose, as in this Sanders amendment, to reapportion the money to be spent for county highways. This proposition is brought forward by the delegate from Erie, for whom I have the highest regard, but I call your attention to the figures which he read to us this afternoon. The figures which he read show that Erie county will benefit by this proposed amendment to the extent of $800,000, and that benefit will be at at the expense of other counties of the State. So it is an amendment from Erie, for the benefit of Erie, and at the expense of the poorer counties throughout the State who will have to contribute that amount. It seems to me, therefore, Mr. Chairman, that it would be an act of the greatest injustice on the part of this Convention to attempt any such proposal as is made by the Sanders amendment. The proposition which I had before the Committee on Public Utilities was a much more just and fair proposition than that. I proposed to let each county spend the money appropriated to it within the county, whether it was appropriated for State highway purposes or for county highway purposes, so that where there was a surplus left in the fund to the credit of a certain county, after all its State highways should be built, that county should be allowed to spend that money for the purpose of building other highways. The Committee on

Public Utilities evidently did not look with favor upon that. They thought it was unfair and inequitable. I can appreciate their taking that position, but I cannot conceive of any reason why the Sanders amendment, which would send us back in highway construction two or three or four years, should be adopted by this Convention. If we had adopted the system which is proposed by the Sanders amendment several years ago, we would have had an entirely disconnected system of State highways in every county throughout the State, roads beginning nowhere and leading nowhere, but each county would have a certain mileage of highways. This proposition of Senator Blauvelt involves a connected logical system of State highways, and the Sanders amendment would throw all that into confusion and place us back on the old system of every county for itself. It has been called inequitable because certain counties have gotten more money out of the highway fund than other counties have. I wish to call your attention, Sir, to the fact that it is not inequitable. There are certain counties located on the trunk lines, on the International highway leading from the Sound up to Canada; other counties situated on the line of the broad highway running east and west the length of the State, in the center of the State, and in the southern tier. Now, when a road must be constructed through one of those counties, it is not alone for the benefit of that county. It is greatly more to the benefit of the whole people of the State for whose advantage these through trunk lines are built, it is a mere accident of area and population that some counties have had, therefore, more money than other counties. And to apportion on the basis of area and population would be entirely inequitable, because it would ignore that fundamental theory upon which the State highway system is constructed, that of building an extensive, connected highway system, instead of disjointed, disconnected, local roads in various counties. I hope, therefore, Mr. Chairman, very much, that the Blauvelt amendment will prevail.

Mr. Dunlap — I hope the Sanders amendment will not prevail. In the county of Montgomery, the main highway, or the State highway, for 20 miles of the 35, was built by the county before the State provided for these highways under the referendum. We built those highways, or that main highway, that is, the real important great highway of the State, and the county paid for one-half of it. The remaining 15 miles, or about half, was built under the highway appropriation of 1912. To take away now the money that was appropriated, from Montgomery county, and distribute it around generally, instead of using it for the State highways as laid out by the commission, would be unfair, entirely unfair, for the reason that there is 20 miles of highways that the

State commission paid for, that was not paid for by the State, except one-half, of course, while these other counties that waited until the State built their roads, are now complaining and trying to get an advantage because they were dilatory in not constructing their highways and being up to date. It may be that we were foolish to go ahead and construct these highways, but it was a great thoroughfare leading from the east to the west, over which more travel goes than, I think, in any other highway of the State. Those highways, or that particular one, running through the county, is constantly used, and was a leader of the highways of the State. The money, according to Senator Blauvelt's proposition, would be taken and appropriated for building the remaining highways of the State, and that is what it should be used for, rather than to include and use it as a part of the county system, it seems to me. Our county is particularly well located, so far as the construction of roads is concerned. There are stone quarries and sand beds, and all the requirements for building highways immediately along the side of the road, so that the construction there has been comparatively light. That is, the expense has been comparatively light in proportion to what it is in many of the counties, and the appropriation for the number of miles that we have in our county is much less expensive than that of many other counties, and in addition to that, instead of building the whole number of miles called for in this apportionment, the State has built, in fact, but 15 of the 35. Yet, the proposition is made here now to take away from that county the money that should go to maintain the general highway and place it in the western part of the State or the eastern part of the State or somewhere else where their appropriation has been used up because of expensive construction or because they have not done anything themselves, and are depending entirely upon the State for what is being done in the highway line. The Blauvelt amendment does not take anything away from anyone. It proposes that all highways that were laid out according to the plan that was then regarded as perfectly proper and fair and nobody objected to, that the surplus will be used to complete those highways, and every county will get all the highways they were to have under that arrangement before one cent of this money can or should be appropriated in any other direction, and it does seem to me that the money should be used to build the State highways, and if there is a surplus, then distribute that among all the counties according to the apportionment that has been made heretofore for county highway purposes. But until we build all these highways the State has laid out and decided to build, no money should be put in the pot and distributed around to the counties that get all they are entitled to.

I never heard of any complaint that the apportionment as it is made by law and made by the authorities, was not fair or reasonable, and every county is going to get, before this money goes anywhere else, their roads that they are entitled to under that apportionment. That being so, there can be no complaint, it seems to me, or, at least, there should be none, when they get all they are entitled to. Now, they are coming here and asking that, because they have a large population and a few miles of territory, they are entitled to a whole lot of roads, county roads that are not a part of the general State system. If it was simply a question of county roads, and not a State line that all people use in travel, there might be some force in their proposition of dividing it according to the counties for all the roads of the county. But there is a different proposition. There are these two systems, one established by the State, and the other a county system, and the State system should be completed in every particular, so that that becomes the great trunk line system, and a little road leading in from the side should be provided for under the county system, and no money taken from the State apportionment to construct these county roads.

Mr. Stowell — Mr. Chairman, it seems to me from the statements made here that there have been made by the State of New York — appropriated by the State of New York, two items of $50,000,000 each for the construction of highways. The first $50,000,000 was raised somewhere about the year 1908. Now, that money was raised and it was distributed to the respective counties according to the referendum of that time, supplemented by the acts of the Legislature. And one of the conditions upon which that fund was distributed to the different counties, was that the counties themselves — I speak as I understand the statements here — should raise the same amount of money to be expended as was given to the counties by the State. If I am incorrect, I will be glad to be corrected. Now, it seems to me that the local authorities in some of the counties were smarter than they were in some of the other. They made their application early. They got their appropriations and they raised the money in their own counties. That money has been expended by the respective counties, and some of the counties got more than others did. That was because the local authorities in some of the counties were smarter and more competent, perhaps, than those in the others. Now, that money was appropriated to the respective counties under a contract. It was done by law, the counties fulfilled their part in raising their money, the money has been all expended and the $50,000,000 was all distributed. Now it is claimed that because some of the counties got more than others,

the matter should be brought up again and some of the counties which at that time happened to get a larger per cent than others should be compelled to receive a less amount under this second $50,000,000 than they would otherwise. Now, in 1912 a referendum was had and a second $50,000,000 was raised, and that money was distributed according to the terms of the referendum, and each county has had its appropriate share. There is no dispute about that. There is no quarrel about that. In some of the counties the roads have been completed and there has been a surplus left, more than was necessary, and this application is made for the purpose of distributing this surplus, amounting to about two million dollars, in the other counties. But now my friend Sanders comes in here with a proposition and says because some of the counties received more than others did, under the first $50,000,000, they should be compelled to receive less under the second $50,000,000 than they otherwise would have been entitled to. Now, Mr. Chairman, this money expended of the first $50,000,000 was expended under a contract between the State and the counties. I have been accustomed to believe that a man's word should be good, absolutely good. I have been taught to believe that a man's bond should be good, and I have been taught to believe that an agreement should be lived up to, and when any gentleman comes here and advocates that the counties that received a larger per cent than some of the others under the first fifty millions should now be compelled to receive less than their share under this second referendum, he is advocating a violation of contract. I don't believe the members of this Convention will lend themselves to a violation of contract. I think the Sanders amendment should not prevail and that the Blauvelt amendment should prevail.

Mr. Wickersham — Mr. Chairman, for the purpose of enabling the Rules Committee to lay a matter before the Convention, I move that this Committee do now rise, report progress and ask leave to sit again as soon as some current business is transacted.

The Chairman — You have heard the motion of the gentleman from New York, Mr. Wickersham. All in favor will signify by saying Aye, contrary No. The motion is carried. (The President resumes the Chair.)

The President — The Convention will come to order.

Mr. Lincoln — The Committee of the Whole has had under consideration general order 45, has made some progress and ask leave to sit again as soon as possible.

The President — The question is upon granting leave to sit again. All in favor will say Aye, contrary No. The leave is granted.

Mr. J. L. O'Brian — The Committee on Rules submits the following report. I move the adoption of the special rule.

The Secretary — The Committee on Rules recommends the adoption of the following special rule: Resolved, That the final vote on general order No. 45 be taken not later than 9:30, and that all speakers be limited to five minutes each. Resolved, On consideration of general order No. 57, future amendments, that 50 minutes be allowed to the Chairman of the Committee on Future Amendments and the introducer of the measure, each other speaker to be limited to ten minutes.

Mr. J. L. O'Brian — I move the adoption of the special rule.

The President — All in favor of the resolution will say Aye, contrary No. The resolution is agreed to.

Mr. Wickersham — Mr. President, I move that the Convention do now resolve itself into Committee of the Whole and continue consideration of the special order.

The President — All in favor will say Aye, contrary No. The motion is agreed to and the Convention will go into Committee of the Whole for consideration of general order No. 45. Mr. Lincoln will resume the Chair. (Mr. Lincoln resumes the Chair.)

The Chairman — The Convention is again in Committee of the Whole on general order No. 45.

Mr. Leggett — There has been a good deal of talk about this matter that has not served to clear the issue. I especially beseech the attention of the gentlemen from Greater New York because they have contributed the larger portion of the money over which we are quarreling and they ought to take some interest in its disposition. It is possible that they may not be as well versed in the history of the disposition of this money as are some of the up-country people. The first $50,000,000 was declared by the referendum to be equitably divided between the counties, but no plan of equitable division was provided by the referendum. As a matter of fact, as everyone knows who cares to know anything about it, it was a case of "grab."

The first county and the best grabber got the most. The larger part of this money went for State highways and the smaller part of it was for county highways. Everybody was so disgusted with this grab game that when the next $50,000,000 was voted a plan of distribution was put right into the referendum. I will not undertake to describe that plan, but it was put in there. The first $50,000,000 has practically all been spent. Of the second $50,000,000, about $15,000,000 has been spent or contracted for. There is about $35,000,000 of it left. Now the Sanders plan, in brief, is to stop this apportionment right where it is, and to so reapportion this last $35,000,000 as to redress the grab game on

the first $50,000,000, so that the result will be that the whole $100,000,000 will have been distributed between the various counties in the same proportion as the plan of distribution approved by the people on the second $50,000,000 after they had considered the results of the grab. They did not undertake in this plan to redress the inequalities of the first game. They apportioned the second $50,000,000 according to this plan. Now all there is to the Sanders proposal is to make good that first unequal, inequitable distribution. Of course, the counties that profited by that distribution say "Oh, no, it would be unjust," and all that sort of thing. The man that has got the swag doesn't want to have any investigation of it. He wants to let bygones be bygones. That is very natural. I do not blame them any. The question is up to you fellows that put up this money. Do you want to have it remain in that way or would you prefer to have it more equitably distributed among all the counties of the State? That is all the story. That is all there is to it.

Mr. L. M. Martin — Perhaps a few suggestions to the gentleman from New York would not be amiss at this time after the suggestions of "graft" so freely indulged in by the gentleman from Allegany.

Mr. Leggett — I did not say anything about graft; I said "grab."

Mr. L. M. Martin — At the time this road proposition first came up, it came up as the result of the deliberations of the Judiciary Committee of the Assembly on what was known as the Armstrong-Higbie bill. At that time the law was enacted under which, if I recall it, the first $50,000,000 was spent. It was a very close contest in the Judiciary Committee for there were very many of us who thought that the Armstrong-Higbie act would result in a patchwork of highways, here and there, all over the State. The proposition was made in the bill, and the law finally enacted, that any county in the State might, by resolution of its board of supervisors, build a piece of highway, the State paying fifty per cent, the county thirty-five per cent, and the town fifteen per cent of the cost. That is the way our good roads system started out. The result was, as was to be expected, that we had a road here and a road there, wherever a county was active in trying to build the roads under what was called at that time "State-aid." Now, while those of us who are opposed to that patchwork idea were outvoted at that time, after the enactment of that law certain interior counties, particularly Oneida county, Montgomery county, and the counties along the great highway from Buffalo to Albany, adopted the proposition of building under that arrangement the trunk lines through the

counties and under that arrangement Oneida county was very active and built its trunk line from the Herkimer county line, through Utica and to the Oneida county line on the road to Syracuse. It also built south from Utica what is now one of the State highway lines, about eight miles built under that first appropriation. You have in Oneida county to-day about twelve miles built on the line of what is to be and what is the trunk highway of the State and on all that roadway which you gentlemen are taking over as a State highway, the State has paid 50 per cent and the counties and towns 50 per cent, so that Oneida county under the first appropriation of $50,000,000 has built ten miles of what is now State highway and which the whole State will get the benefit of, because it does not have to do it again. Now, under these conditions, and because we were active and tried to take advantage of the generosity of the people of New York in offering to donate this money — and I never could conceive how they came to vote to pay 50 per cent either in the judiciary or in this House, but they did, we have gone ahead until we have built $170,000 worth of roads. But we have built these roads as part of the State system. Now, it is not right to have Erie county, which has been negligent, come now and say, because you have benefited yourselves by that opportunity we are coming in at this late day and cause you by operation of an amendment to the Constitution of the State of New York to make a general division.

Mr. Ryder — Mr. Chairman: The situation in Putnam county has already been spoken of by Mr. Blauvelt. As an illustration of what would happen in the small counties in case the Sanders amendment prevails I would like to take the time of the Convention for just a moment and state in figures just what that situation is. Putnam county is a very small county extending from the Hudson river to the Connecticut line, having an area of about 240 square miles with a population of about fourteen thousand and a mileage of highways approximating five hundred; so that under the second appropriation its apportionment of highway money would be very small. Under the first apportionment the State of New York through its Legislature laid out two State highways across that county. It virtually had over twenty-three miles then and it built those State highways, by the State, from State moneys, for the benefit of the people of the State and not for the benefit of the counties. In fact, they were sections of the two main highways running from New York city to Albany; from New York city to the Berkshires and from New York city to the northern and eastern and western resorts, highways that are traveled all the time during the summer time, by a great many

vehicles and which are necessary to the highway system of the State. They were built at State expense, as State highways and from the first appropriation there was paid for those highways upwards of $379,000. The county highways built at the same time, cost $210,000. Under the Sanders proposition it is stated that the county of Putnam would be charged a surplus payment on its account of $319,000 and that sum must be held back from the county of Putnam until all the other counties of the State have received their equal proportion. It seems to me that that is a very unjust, unfair discrimination against the small county. These State highways were not asked for by the counties. They would not have been built by the counties if the counties had supposed for a moment they were to be charged a proportionate amount as against their county highways. Every county would have selected, if it had been limited in amount, its own routes. They were built with the distinct understanding that they were laid out there as part of the State system of highways which were deemed necessary by the State authorities to complete the State system and that they were necessary in the complete State highway system.

Mr. Deyo — Mr. Chairman and gentlemen of the Committee. If I can have the undivided attention of this committee for five minutes I will endeavor to make perfectly clear the general proposition which is before the House. In the first place, the moneys which were appropriated for the construction of highways was raised by general tax. These highways are to be built in towns, not in villages nor cities. The city of New York contributed, we will say, 65 or 70 per cent of those amounts. The other cities and villages up-State probably contributed 20 to 25 per cent, so that the entire amount is practically a gift from the cities and villages of the State to the rural communities. The proposition has to do with how that gift shall be divided between the recipients of it. I do not propose to take a technical view of this case. The general situation is this: Under the referendum of 1905 $50,000,000 was appropriated for State roads to be equitably apportioned among the different towns. That money was raised and has been spent. The Legislature was called upon to lay down an equitable rule as to how those moneys should be apportioned. They did so and the basis upon which that $50,000,000 was distributed —

Mr. Sanders — Where will you find that equitable rule?

Mr. Deyo — It is stated in the referendum. It is in the Constitutional provision.

Mr. Sanders — Of 1905?

Mr. Deyo — 1905.

Mr. Sanders — I think you are very much mistaken.

Mr. Deyo — If you refer to the Constitutional provision you will find it right there. It was to be an equitable apportionment among the counties. The Legislature made what it deemed an equitable apportionment. Litigation grew out of it. The case I think was the People *ex rel.* Hooker, 204 New York — the encyclopaedic Delegate from New York suggests. The question was tested as to whether the use of these moneys for certain routes which the Legislature said should be built out of those funds, constituted an equitable apportionment of those moneys, and the court held that the legislature was the sole judge. But be that as it may the $50,000,000 has been spent. The basis of the apportionment was that it should be equitable. The courts held that the Legislature was the sole judge as to what was an equitable apportionment. As a matter of fact it was apportioned on the basis of the political activity of certain wire-pullers in and about Albany, but nevertheless the money was spent. In 1912 there was another referendum and that act provided that $50,000,000 more should be raised for the purpose of State roads, and that $30,000,000 of that amount should be used for county highways; that $20,000,000 of that amount should be used for State highways on the routes already laid out. That referendum act further provided that those moneys should be apportioned as for both State roads and county roads among the various counties on the basis of three factors. One was, population, another was mileage, and another was area. Now then, the entire $30,000,000 which was voted by the people in 1912 has in fact been apportioned to the several counties of the State in accordance with the rules laid down in the referendum act of 1912. There is not a dime or a dollar of that $30,000,000 that has not been apportioned. I don't mean it has been spent but it has been apportioned and stands to the credit of the various counties of the State. Now the $20,000,000 was to be used for the construction of highways and appropriated to the different counties on the same basis.

The Chairman — The gentleman's time has expired.

Mr. Deyo — I would like, Mr. Chairman, just a few moments more.

The Chairman — The gentleman will appreciate that there remains only ten minutes more before a vote is to be taken.

Mr. Deyo — The $20,000,000 was to be distributed upon the basis of those three factors. Now at present out of the $20,000,000 apportioned in pursuance of the referendum act for State highways, there has been sufficient to complete the routes in some counties but it has been insufficient to complete the State routes in other counties. In other words there is in the neighborhood of

$2,200,000 unexpended surplus which will result after all the State routes in the different counties have been built so far as they can be built under that act. That is, the only excess there is if the moneys which the people voted should be apportioned to the various counties on the basis which I have stated for the construction of State routes. It is this $2,200,000 that Senator Blauvelt's bill has reference to. It is simply a question of whether this sum of $2,200,000 shall be used in some way, or whether it shall lapse and fall into the treasury of the State of New York. That is all there is of it. Now then, Mr. Sanders' proposition is this: that inasmuch as the apportionment of the first $50,000,000, which has been spent, and which has been used was not upon the same basis as the apportionment of the moneys voted in 1912, therefore we should reapportion the $30,000,000 apportioned for county roads in 1912. But gentlemen, we voted that $30,000,000, the people of the State voted that, upon the express condition stated in the act, that that $30,000,000 should be apportioned to the several counties on the basis of population, mileage and area, and if the Sanders amendment is adopted, it will simply mean —

Mr. Leggett — Mr. Chairman, I rise to a point of order. The gentleman's time is up.

The Chairman — The point of order is well taken; the time is extended only by unanimous consent.

Mr. Schurman — Mr. Chairman, Mr. Deyo has stated so well the situation that I shall endeavor to compress what I intended to say into less than five minutes. I want to submit an amendment to Mr. Blauvelt's proposal.

The Chairman — The Clerk will read the amendment.

The Secretary — By Mr. Schurman. On page 2, line 2, after "highways" insert "after appropriation by the Legislature".

Mr. Schurman — Mr. Chairman, there are three possibilities, and only three, so far as I can see, before this Convention. In the first place, we may open up the whole question of the State highways since the first appropriation was made ten years ago, and if inequalities in apportionment have occurred — and I am far from saying they have occurred — undertake to redress them. I for one do not feel competent to review for the sake of establishing justice at this late day, the action of the Legislature of the State of New York and the people of the State in voting the referendum of 1912. Secondly, we may deal with a real evil, or a difficulty which has arisen. We may undertake to solve an actual problem which presents itself. The fact is, that of the last $50,000,000, $2,200,000 are not available for the roads and will not be available for the roads except by action of this Convention. Mr. Blauvelt's proposal deals with that question and with that

alone. Thirdly, we may do nothing. If we do nothing the amount available in the last $50,000,000 authorized, will be $47,800,000. For my own part I should rather do nothing than adopt the Sanders' amendment simply because I feel unable at this day to sit in judgment on the action of the Legislature during all these intervening years. I earnestly hope that the Blauvelt proposal will be adopted. If it is not adopted, I can reconcile myself to doing nothing. Whether you vote the $2,200,000 which is now available or not, it will be voted at some time for $9,000,000 is needed and must be provided to complete the system of State highways. Here are $2,200,000 in the treasury. You adopt the Blauvelt measure and call it out. If you do not, provision will be made in the future in some other way for raising the whole amount of nine millions. In explanation of my amendment, Mr. Chairman, I will say, while I am in entire accord with the Blauvelt amendment, I think one minor change should be made. In the absence of provision in the Constitution to the contrary, the Legislature represents the sovereignty of the people. I do not like turning over to a highway commission the expenditure of $2,200,000 in such way as seems expedient to it, and I have therefore provided in my amendment that this action shall be taken after appropriation by the Legislature.

Mr. Blauvelt — I accept the amendment.

Mr. Tuck — Very briefly, if you will bear with me, I think I have two minutes. I assume you understand I am representing the county of Monroe here, and I am very frank about it. First of all, I desire to say in reply to some of the gentlemen that the $2,200,000 which will be available from these unexpended balances will not, and, concededly cannot, connect up the State highways. So much for that proposition. Secondly, it does not seem to me that there is any statute of limitations against the correction of inequity; and, if in the distribution of the first $50,000,000 inequity was performed by the Legislature of this State, I do not think it is an argument before this Convention for letting that inequity stand. Now, further, as applied to the use of these balances — and I shall again become definite and local — how do you get these balances for uncompleted State highways in the various counties? You get it by deducting from the allotment to these counties the amount of State moneys used in the construction of State highways in those counties. Again I say to you gentlemen that in many counties, and particularly in my county, those highways were constructed largely by the 50 per cent. contribution by the counties; and by using that deduction you deduct from us $229,000, because we saw fit in the construction of highways throughout our county to spend 50 per cent. of the cost, and the

State comes along and assumes jurisdiction of those highways now and says, under the Blauvelt amendment "Because you did that, you shall not be allowed to use the $229,000 of that allotment." Now, I say, if the 1912 enactment is fair, and nobody here is seriously criticising it, it is proper and right for this Convention to apply that measure to the allotment of the $100,000,000. There is no contract about it at all. We say that in applying that measure of 1912 to the whole hundred million, those counties which have received more than they should have, had that measure been applied, shall not receive so much in the distribution of the balance.

The Chairman — The time set by the special rule having now arrived, the Committee will proceed to vote on the amendments.

Mr. Reeves — Mr. Chairman, may I say one word?

The Chairman — Not unless you have unanimous consent. Is there objection —

A Delegate — I object.

The Chairman — The question is first on the substitute offered by Mr. Sanders. The Clerk will read.

The Secretary — By Mr. Sanders. Strike out lines 4 to 9, inclusive, of page 1, and lines 1 to 5, inclusive, of page 2, and insert in place thereof the following: Section 13. The State Commission of Highways shall reapportion among the counties of the State containing towns all the funds arising from the proceeds of the sale of highway bonds heretofore authorized to be issued which have not been expended and which are not necessary to pay for the construction of highways for which contracts have been made, pursuant to law, in such manner that each such county so far as possible shall receive out of all the funds provided by the State heretofore expended and hereafter available for expenditure for highway construction, a sum equal to the sum to which such county would have been entitled if all such sums had been apportioned in the manner prescribed in section 4 of chapter 298 of the laws of 1912. The funds so apportioned to each county shall so far as necessary for that purpose be used for the completion of the routes of the State highways described in section 5 of chapter 298 of the laws of 1912 if any thereof remain uncompleted within such county, provided that the State Commission of Highways may determine that any uncompleted portion of the route or routes of such State highways within such county is not essential to the general plan of State highways as established by law and dispense with the building thereof. The remainder of the funds so apportioned shall be used solely for the construction and improvement of county highways as defined in section 3 of the highway law.

The Chairman —A rising vote is asked for. All those in favor of the amendment by Mr. Sanders will rise and remain standing until counted. All those opposed will rise. Be seated. The Clerk will announce the result.

The Secretary —Ayes, 47; noes, 68.

The Chairman — The amendment is lost. The question now occurs upon the amendment offered by Mr. Marshall. The Clerk will read.

The Secretary — By Mr. Marshall: After the word " sums " in line 8, page 1, insert the words " to be determined by the comptroller ".

Mr. Blauvelt — I accept the amendment.

The Chairman — You have heard the motion. All in favor will say Aye, opposed No. It is carried. The question now is upon the amendment offered by Mr. Schurman. The Clerk will read the amendment.

The Secretary — By Mr. Schurman: Page 2, line 2, after the word " highways " insert the words " after appropriation by the legislature ".

Mr. Blauvelt — That is accepted, Mr. Chairman.

The Chairman — You have heard the amendment offered by Mr. Schurman. All those in favor say Aye, opposed No. It is carried. The question now occurs upon recommending the passage of the measure as amended —

Mr. Blauvelt —And that when the Committee rises it asks the favorable consideration of the Convention in the final passage of this amendment.

The Chairman — You have heard the motion made by Mr. Blauvelt. All those in favor will say Aye, opposed No. It is carried. The Committee of the Whole now has under consideration General Order No. 57, proposed by the Committee on Future Amendments. The Chair will recognize Mr. Hinman of Albany.

Mr. Hinman — Mr. Chairman, I first desire to offer a very unimportant amendment. This would very likely be corrected by the Committee on Revision, but I think it is just as well to correct it now.

The Chairman — The Clerk will read the amendment offered by Mr. Hinman.

The Secretary — By Mr. Hinman: page 5, line 11, insert a bracket before the period following the word " legislature ".

Mr. Hinman — The Committee on Future Amendments has presented a bill dealing with the subject of future amendments and revision of the Constitution which can be very properly divided, I think, into three parts one dealing specifically with the question of machinery for future amendments and revision, the

second one dealing with the validity of an election to pass upon any question submitted to the people, and the third is the question of concurrent submission by both the Legislature and the Constitutional Convention. The first part of the bill, dealing with the subject of the machinery for future amendments and revision, may likewise be very logically divided into three suggestions of improvement, one of them dealing with an improvement of the legislative method for initiating proposals, another dealing with the question of the submission of amendments at a general or special election, and the last dealing with the number of votes required to be cast and counted for or against any proposed amendment of the Constitution on any question that may be submitted to the people. I desire to state fairly briefly, for the time is not very long for the discusson of this matter, some of the considerations which actuated the Committee on Future Amendments in offering to this Convention a little more strict rule for the determination hereafter of whether an amendment or a new Constitution should be adopted or whether the question of calling a further Convention should be approved by the people.

The process of amending the Constitution may be said to be superior to State legislation. If the Constitution is to be amended with the same facility as a statute is amended, the Constitution must be deemed to be nothing but a pious declaration. It should not be as easy to amend the Constitution as it is to amend the statute, and the Committee has realized fully as well that we should not provide an amending process which should be unworkable. We have considered, however, that we must recognize that our government rests upon the distinction between a Constitution, on the one hand, and of the laws upon the other. One represents the principle laid down by the people themselves in their sovereignty while the other represents the details of government carried out within the limit of the authority and the rules of the Constitution. Unless the Constitution is something more sacred, more enduring, less susceptible to change, than are laws, constitutional government is a mere vagary, an airy nothingness, to be blown away by every passing breath of public opinion. If the Constitution is to be amended by impulse, it might just as well not exist at all. If amended without a substantial expression of the mind and the will of the people as a body, it has lost its force as a fundamental document and might well be abolished. It derives its force from a higher authority — the sovereignty of the people — a higher authority than fleeting public opinion or even the fleeting opinion of the regular representatives of the people in the Legislature. And just as it is necessary to establish rules of limitation for the representatives of the people themselves in the Legislature,

so it is necessary to establish a rule for the people, when, in their sovereignty, they pass upon any question of amending the Constitution; and upon the principle that, unless the mind of the people is directed to the proposition involved and educated by a full consideration of the question, they cannot be expected to render an intelligent decision. Our experience in the past has been that a very substantial majority of our citizens are either unwilling or unable to express any opinion whatsoever. The established rule of our government is the majority rule. No law can be passed by the Legislature without having a majority of votes of all those who are elected to both Houses of the Legislature. We have never permitted a majority of a quorum present and voting to pass any law, and any suggestion of that kind would meet with absolute and universal condemnation, and yet that is the rule that we have adopted so far as the vote of the people is concerned when we submit a question to the people for their decision. The Committee has come to the conclusion, after a thorough consideration of this question, that the laxity of that rule is perilous. We find that there is a feeling throughout the entire country, and very properly so, that the Constitution of any State should not be amended by too small a number of people expressing an opinion. The Legislature is apt to feel no responsibility for the final result. When the proposition reaches the people they feel that the Legislature has given the matter thorough consideration and they are therefore inclined to ignore their function of self-expression which has been granted to them and they permit the amendment to go by default. The indifference of the people has been growing to be more and more apparent. A substantial majority of our voters seem to know nothing about the propositions that are presented to them, and do nothing about it; probably because it is easier to do nothing.

The problem seems to be to devise some system whereby substantially all of the people can be led to think upon the same subject at the same time. Unless this is accomplished we have not solved one of the great phases of Constitutional government; in fact, I think it is fundamental. Under the existing system, we seem to be governed by the rule of the minority through the unintelligent default of the majority. Your committee believes that this is not a wholesome condition. Governor Hughes in his annual message to the Legislature in 1910 expressed himself forcibly upon the subject when he said: "Our experience at the last election with regard to the Constitutional Amendments submitted for adoption shows a lamentable lack of sense of responsibility on the part of our citizens with respect to changes in the fundamental law." The experience of our State to which he

referred was that only a third of all the voters voting for candidates had seen fit to express any opinion whatsoever either for or against the amendments that were submitted in 1909. Other governors in other states have called attention in the same way to this lamentable lack of the sense of responsibility of our citizens. We recognize that the average Constitutional Amendment is not plain upon its face, that it cannot be contemplated without discussion, and we have concluded that the fundamental error of the present system is the fact that it lacks the dynamics of public discussion. Your committee has endeavored to solve this question. It believes that it has solved it to the largest practical extent. We realize that you can take a horse to water, but you cannot make him drink. We realize that you cannot compel the voters of this State to vote upon Constitutional Amendments; but you can lead them up to a consideration of the matter, you can lead them to think upon the propositions by placing the burden of making a change in the Constitution upon those who desire that change, by campaigning for that change, by stimulating discussion both on the stump and in the press. The present system lacks that stimulant, so long as the majority voting thereon, the present rule, is the rule. A quiet organization of forces throughout the State is more effective usually to pass an amendment to the Constitution, for the reason that to arouse discussion and to invite hostility is not so effective and is a more embarrassing situation sometimes for those who are proponents of a change. It is a good gambler's chance ordinarily that the average citizen will not vote upon any amendment of which he knows nothing. This quiet little body of friends of the proposition can cast its solid vote for it in the confident anticipation that opposition to it is not organized, and that the great body of people are indifferent to it, because of sheer ignorance. Now, we realize that many good citizens of this State are impatient for reform. But reform should be the result of intelligent consideration, reflection and deliberation, particularly reform in Constitutional rules and regulation. There should be an incentive to thoroughly discuss every problem upon which expression of opinion is desired. Experience has shown us that when the people really desire a change, they are able to get it, and it is therefore not with the idea that the people cannot be trusted to render an intelligent opinion on any subject that your committee has provided this stricter rule. On the contrary, your committee has experienced great anxiety lest in the future we should not get a full expression of opinion from the people under the existing system, and in unconscious moments commit themselves to a program of government which a well-informed judgment never would have tolerated. Your committee

has, therefore, reached the conclusion that stability is the prime consideration. But it realizes also that it is essential that in the amending process we should not provide a rule which is unworkable.

We have considered the number of proposals that have been presented to the Committee. We have considered the proposal that we should have nothing in the future except amendment by Convention. But the Committee has come to the conclusion that so far as that is concerned, they were afraid that it might cheapen the Convention idea to have a Convention called too frequently. They were impressed with the idea that there might be incidental changes needed from year to year, which would, while important, not be important enough to go to the great expense of calling a great Convention for the purpose of remedying it. Therefore they have concluded that it was essential that we should retain the legislative method in conjunction with the Convention plan. You will find our proposal does not change the present status so far as the Convention plan is concerned, and we have provided that the questions shall be automatically submitted in 1935, twenty years from this year, and that the Legislature shall have the right to submit the question at any time, just as under the present Constitution. In considering changes so far as the legislative method of initiating proposals was concerned, we have considered several. We have had it recommended that we provide for passage by one Legislature instead of two; but the Committee has come to the conclusion that that would fail to provide sufficiently for mature judgment and deliberation. We have had suggested that no amendment should be submitted more than once in five years; then again that not more than two amendments should be submitted in any one year. But our experience in the past has led us to believe that there is no great evil to be corrected in that regard. But the Committee does offer two suggestions for improving the procedure of the legislative method of making proposals. It has become apparent that there is wisdom in calling to the Legislature's attention the fact that the amendment of the Constitution is a more solemn function than the passage of ordinary laws. In order to attract attention to the importance of a constitutional amendment and to insure discussion above the ordinary, the Committee recommends that the Legislature debate in joint session any amendment to be proposed prior to final vote upon that amendment. We believe that this will not only make it an extraordinary occasion, but the members of each House will profit considerably by the expressed judgment of the members of the other House in discussion that will take place in joint session. It is therefore the expectation of the Committee that we will

receive very beneficial results from having this discussion of Proposed Amendments in an extraordinary way in joint session. The Committee further suggests that all proposals be printed and on the desks of the members in their final printed form at least five calendar legislative days before the final vote thereon. It is evident that the failure of the Convention of 1894, when it made a proposal that all legislative bills should be printed and on the desks of the members in their final form for three legislative days — the failure of the Convention of '94 to make the same provision for Constitutional Amendments was an oversight, and we believe very thoroughly that that should be corrected, and we have made a provision for the correction of it. It is likewise evident from our experience that at a special election it is impossible for us to get a substantial expression of opinion from the people, and the Committee has been convinced no good purpose would be served in submitting any further questions to the people at anything other than a general election, and we have incorporated that change in the bill.

But what seemed to be the most important consideration was the quantum and the character of the vote by the people themselves. The referendum on the Constitutional amendment should be a reasonable, effective means for determining the mind and the will of the great body of the people; and the vote should therefore be the expression of opinion of the largest number who can be led to express an opinion. The character of the vote is of the greatest importance. It should be intelligent, well thought out, and the deliberate judgment of the people. The rule to-day fosters the casting of the vote by the average voter without having any real opinion to express. The majority of the voters, therefore, express no opinion, and many others express a very snap judgment either just before or while marking their ballots. This is so perfunctory and so unintelligent as to be of no real value, and unless corrected the principle of the referendum even as to constitutional amendment is utterly condemned. The committee is convinced this should be corrected. There is a feeling throughout the country, as I have stated, and very properly so, that too small a body of voters should not be permitted to amend the Constitution. Various proposals have been suggested to the committee with reference to that. It has been thought by some that cutting down the number of proposals might have something to do with it, the frequency of submission of some certain amendment. It has been, however, in some states desirable to provide for a separate ballot for the consideration of constitutional amendments, but we have had the separate ballot in the State of New York since 1896, and it has not solved the problem. In Rhode Island they make the

requirement that three-fifths of those voting thereon shall be necessary in order to adopt an amendment; in New Hampshire the rule of two-thirds of those voting thereon shall be necessary in order to adopt an amendment. But the fallacy of that rule is that it does not tend to insure and bring out a wider field of voters. We need a fuller expression of opinion from all of the people, rather than a higher percentage of the vote of those who happen to vote upon the proposition. Popular interest should be aroused and discussion should be encouraged in order to lead a larger number of people to express an opinion and to express an intelligent opinion. In a number of the states they have tried to provide for this by making a majority — making it necessary for a majority of those voting for candidates at the election to favor an amendment in order that it may be adopted. But the committee has made an investigation of the result of that rule, in the eleven states in which they have had that rule, and we find that it is too severe, too stringent a rule, too unworkable, too difficult to amend the constitution. Those states are Alabama, Arkansas, Illinois, Indiana, Minnesota, Mississippi, Nebraska, Ohio, Oklahoma, Tennessee and Wyoming. But we have investigated the vote which it was found possible to obtain in those states adopting that rule and we believe we have found a satisfactory conclusion and solution. We have found that the percentage of the vote in those states was high enough to warrant with absolute safety a provision requiring that at least 66 2/3 per cent. of the voters voting for candidates should at least express the choice, and that at least one-third of the voters voting for the highest candidate upon the ticket or voting at the election should favor the amendment that was proposed.

Now, I have the figures which I have collated showing the average percentage of votes that were called out by the rule that has been established in these eleven states where they have a majority vote and with a most satisfactory result. It has brought out a very substantial vote of the people. In Alabama, for example, the average was 80 per cent. during the period of ten years that I have covered; 80 per cent. of the vote cast at the election of candidates. Five amendments submitted in those ten years in the State of Alabama and the lowest per cent. was 69.2 per cent.; so that all five amendments in Alabama would have passed under the rule we are offering you to-night. In Arkansas, 74 per cent. of the vote cast at the election. There were seven amendments submitted during those ten years in Arkansas. The lowest vote was 59.3 per cent.; but five out the seven amendments would have passed under our rule. In Illinois they averaged 73 per cent. of the vote cast at the election. There were two amendments submitted and the lowest one received 70.9 per cent. and

both of them would have passed under our rule. In Indiana they averaged only 48 per cent.; but there were only three amendments presented, one of which only received 8.6 per cent., which, of course brought the average very low. In Minnesota they average 62 per cent. of the vote cast at the election. There were thirteen amendments submitted in Minnesota. The lowest received 44.1 per cent. Five out of the thirteen would have passed satisfactorily under the rule we are presenting. In Mississippi they averaged 75 per cent. during this period of ten years, and the lowest of eight amendments that were submitted in that time received 56.4 per cent. and six out of eight would have passed under the rule we are proposing. In Nebraska they averaged 85 per cent.; there were three amendments submitted in that time and the lowest received 80.3 per cent.; so that the three would have passed. In Ohio they averaged 59 per cent.; there were ten amendments submitted during that time but there was one amendment that received only 6.1 per cent. which brought the average pretty low; but, five out of the ten would have passed under our rule, and it was shown that one amendment received 90 per cent., another 89 per cent., another 89 per cent., and two of them received 82 per cent.; all showing the possibility of bringing out a substantial vote of all the electors. In Oklahoma, 85 per cent. was the average, and the lowest was 75.4 per cent., and all four amendments submitted would have passed. And so I might go on showing the effect of having a rule which places the burden upon those desiring a change to get out and agitate and discuss the problem and arouse interest, not only in speech, but in the press, and get the people thinking, and if you can only get all the people in this State thinking on the subject at the same time you can get a very intelligent expression of opinion and so your Committee believes it is very important that we should establish such a rule. I am not going to take any more of the time of the Convention. We have covered the question of the validity of elections. Mr. Marshall has proposed an amendment and I desire to have him present it himself. The question of woman suffrage has been covered. I think this Committee understands how we have covered that so as not to interfere with the submission of the proposition by the Legislature, and we have likewise covered the canal referendum proposition, so that if it is approved by the people this fall bonds that are issued will be serial bonds instead of bonds providing for a sinking fund.

Mr. Dunmore — I desire to offer an amendment.

The Chairman — Mr. Dunmore will send his amendment to the desk.

Mr. Cobb — Mr. Chairman, I desire to offer an amendment.

The Chairman — Mr. Dunmore's amendment will be read by the Clerk.

The Secretary — By Mr. Dunmore. Page 1, line 6, after the word "majority" insert "of two-thirds". On page 2, line 3, strike out all of line after word "thereon", also all of lines 4, 5, 6, 7, 8, 9, and all of line 10 except the word "submit" and insert in place thereof the words "the legislature shall". On page 2, line 12, after the word "the" insert "next".

The Chairman — Will the Clerk now read the amendment offered by Mr. Cobb, which was sent to the desk? Mr. Cobb's amendment will now be read:

The Secretary — By Mr. Cobb, article XIV, section 2, strike out the last three lines on page 2 and the first two lines on page 3 up to and including the word "state" in the following line and insert in place thereof "The question, 'Shall there be a Convention to revise the constitution and to amend the same?' shall be submitted to the electors for their decision thereon at such times as the legislature may by law provide, and in any event at each general election next ensuing the expiration of a period of twenty successive calendar years since the last previous submission of such question".

Mr. Barnes — Mr. Chairman, I would like to offer an amendment.

The Chairman — Mr. Dunmore has the floor and he yields that amendments may be offered. The Chair is informed that there are other amendments offered by Mr. Cobb.

The Secretary — By Mr. Cobb. Article XIV, section 2, page 3, strike out all italicised words in lines 4 to 9 inclusive.

By Mr. Cobb. Article XIV, section 2, page 4, strike out the lines, 18, 19, 20, 21 enclose the sentence beginning with the word "upon" in line 17 in brackets, and in place thereof insert "If the people shall approve of such constitution or constitutional amendments by the majority of the electors votes thereon such constitution or constitutional amendments shall go into effect on the first day of January next after such approval".

Mr. Cobb — Mr. Chairman, the words "votes thereon" should be "voting thereon".

Mr. Parsons — Mr. Chairman, I desire to offer the following amendments:

The Chairman — Mr. Barnes has also sent an amendment to the desk, which the Clerk will read.

The Secretary — By Mr. Barnes. Page 3, line 16, insert a bracket before the word "prior" and after the word "election", and insert in the same line following the bracket after the word "election" the following in italics: "December next ensuing

after the completion of the canvass of the votes cast for delegates at large at such election". Page 4, line 16, insert a bracket before the word "six". Page 4, line 17, insert a bracket after the word "weeks", and insert after such bracket the following in italics "ninety days".

Mr. Marshall — Mr. Chairman in order that the amendments may be before the Convention I offer another amendment.

The Chairman — The Clerk will first read the amendment which has been offered by Mr. Parsons.

The Secretary — By Mr. Parsons: To amend Section 1 by striking out the words in italics on lines 15, 16, 17, 18, 19, 20 and 21 on page 2.

Mr. A. E. Smith — Mr. Chairman, I would like to ask the Chairman of the Committee on Future Amendments what he means by striking out on page 2 —

The Chairman — Mr. Smith, may I call your attention to the fact that there is another amendment to be read and that Mr. Dunmore has the floor and has given away temporarily for the presenting and reading of these amendments.

The Secretary — By Mr. Marshall: On line 22, page 3, after the word "amendment" add the words "or proposed constitutional amendment".

Mr. Marshall — Mr. Chairman, that should be page 4.

The Secretary — At the end of the same line strike out the word "upon" on line 24, page 4, is that?

Mr. Marshall — Page 4. All of these are on page 4.

The Secretary — After the quotation marks add "or upon any other question submitted to the electors of the state under the constitution". After the word "amendment", line 25, page 4, add the word "constitution". After the word "or" on line 26, page 4, add the words "constitution or".

Mr. Wickersham — Mr. Chairman, I offer the following amendment:

The Chairman — The Clerk will read the amendment offered by Mr. Wickersham.

The Secretary — By Mr. Wickersham: On page 2, lines 15 to 21, strike out the matter in italics. On page 3, lines 4 to 9, strike out the matter in italics.

Mr. A. E. Smith — Mr. Chairman, Judge Dunmore has given way to me for a moment, as I want to find out what this means in order that I may have an amendment prepared, if it means what I think it means. Page 2 you have on line 2, on line 7 and on line 11, and again on line 14, and again on line 21, bracketed the words "or amendments". I take it by that you propose to have only one amendment submitted at a time.

Mr. Hinman — Mr. Chairman, that is not the idea of the Committee. It was simply thought that it would be better English and it would not convey in any way the idea that there should be at any time no more than one amendment submitted. You will find on line 11 that it speaks of "each proposed amendment", and then in starting it says "Any amendment".

Mr. A. E. Smith — I know, but a little bit further up, when you say that the amendment must pass two different legislatures you strike out the words "or amendments" and there would be only one proposed amendment to submit to the people, because under this language only one amendment could be passed in the time which you prescribe, to wit, the election of two different legislatures.

Mr. Hinman — Mr. Chairman, I think the gentleman overlooks the fact that this is all one sentence that he is referring to, and that the sentence begins with the word "any", "any amendment", and in line 11 it speaks of "each proposed amendment", on page 2.

Mr. A. E. Smith — That is not very clear to me. You take out the words "or amendments" at the beginning of the section again. Now, there must be some reason for taking out the words "or amendments". That has been in the Constitution for twenty years, and my idea of it is that you can initiate at one session more than one amendment.

Mr. Hinman — Mr. Chairman, of course that is the idea. The Committee does not desire to convey any other idea. We have left out the words "or amendments" for the purpose of better English, and it was not the idea of the Committee that there should be a limited number of amendments submitted in any one year.

Mr. A. E. Smith — Isn't it done here by taking out these words "or amendments"?

Mr. Hinman — Mr. Chairman, the Committee believes that by leaving out those words "or amendments" that it is better English and the meaning must be perfectly clear. If the Committee of the Whole believes it is not clear I am sure the Committee on Future Amendments will be willing to accept an amendment in that regard and I think that discussion as it appears on the record, in addition to the language as expressed, when we say "any amendment", and when we speak on line 11, page 2, "each amendment", must convey the idea that that is only treating it in the abstract, as applicable to any amendment that is proposed and not confining it to any one amendment.

Mr. A. E. Smith — Well, I don't like to get into a discussion about the English of it because I feel that I cannot win out. I

don't like to see it taken out of there after being there for twenty years, and I am sure that if somebody may come along about four or five years from now and say that there has been one amendment pass the Legislature for submission and that is all you can submit this year, and then turn to this section, then the English argument wouldn't help you out very much.

Mr. Low — May I ask Mr. Hinman the significance of the brackets on lines 12 and 13 of page 2 where the words "and at such times" are cut out? Is it intended that every such amendment that passes both Legislatures shall be submitted at the next general election? My recollection is that for four or five years after 1900 all amendments approved by the Legislature had to lay over on account of the canal referendum and the highway referendum?

Mr. Hinman — Mr. Chairman, that is not exactly right. Under the Constitution as it now stands no more than one proposition for the creation of a debt can be submitted at any one election and that does not in any way interfere with the submission in any one year of any number of Constitutional Amendments either by themselves or in connection with any proposition for the creation of a debt, and the reason for striking out the words "and at such times" was in order that we might hereafter have all submissions at a general election and not permit them to be submitted at a special election.

Mr. Dunmore — Mr. Chairman, the purpose of my amendment is to make it easier and quicker to get a vote of the people as to a Proposed Amendment. That has been the trend of the Constitutions of the different States for a great many years. Since 1885, seventeen states have either revised or adopted new Constitutions and of those seventeen, fourteen have eliminated the action of two concurrent Legislatures. So that the only three that have adopted Constitutions since 1885 that have retained the necessity of action by two Legislatures are New York, North Dakota and Virginia. Now, the criticism has been made by certain people that it was too difficult to amend our Constitution and the courts have been criticized as being reactionary, because they would not construe a Constitution directly contrary to what was expressed, when the cities should have directed their attention in accomplishing a result to an amendment to the Constitution. In most of the States where they have dispensed with the action of two consecutive Legislatures they have increased the majority in the one Legislature required to submit a Proposed Amendment to the Constitution. So that on page 1, line 6, after the word "majority" I have suggested an amendment "of two-thirds," so that by a majority of the members elected, acting favorably

upon a Proposed Amendment, the Proposed Amendment may be submitted at the next general election thereafter.

Mr. D. Nicoll — I only want to know whether in those States which require the amendment to pass the Legislature once, there is a provision increasing the number of people who must vote upon the amendment.

Mr. Dunmore — Generally there is, sir.

Mr. D. Nicoll — Yes.

Mr. Dunmore — The same as in this case, and I am in favor of that part of this amendment, as I desire to say before I get through. Now, Mr. Chairman, the process of amending Constitutions has grown and has been a gradual development. In the revolutionary period Constitutions were adopted by Legislatures, by Legislatures only, and with the exception of a few instances the people had nothing to so say about it. The Georgia Constitution of 1777 was the first to contain a provision requiring action by the people for calling a Constitutional Convention. The first suggestion of a legislative proposal of an amendment to a Constitution was the Constitution of Virginia prepared by Jefferson in 1776. The Maine Constitution of 1819 was the first to dispense with two legislative actions in proposing amendments. That practice of proposing amendments by one Legislature has met with popular approval and is now followed by a majority of the states. Since 1885 seventeen states have adopted or amended their constitutions and all excepting three provide for the submission of proposed amendments by one legislature. Those three states are New York, North Dakota, and Virginia. Now, the Constitutions of thirty states contain the provision for submitting a proposed amendment to the people by the action of one legislature only. This change from a requirement of action by two successive legislatures to one was undoubtedly made in response to a demand of the people for a quicker and easier method of changing their fundamental law. A few states have gone even further and permitted a submission of a proposed amendment to the people upon a petition of a certain proportion of the voters of the State without any legislative action. Hence, while we see the tendency among the states is to make it easier for the people to get an opportunity to vote upon a proposed constitutional amendment, there has been absolutely no relaxation as to the number of votes to be cast for the adoption of such amendment. Upon the other hand, the tendency is to require a larger vote to pass an amendment. For instance, when the action of two successive legislatures was required to submit an amendment, generally a bare majority of each branch was all that was necessary: but when the action of one legislature was substituted in

place of the action of two legislatures a two-thirds or three-fifths majority of each branch was required. Of the thirty state constitutions to which amendments may be proposed by one legislative action, six permit such proposal by a majority vote, seven require a three-fifths vote and seventeen require a vote of two-thirds of the members of each house. In Alabama, Arkansas, Illinois, Indiana, Minnesota, Mississippi, Nebraska, Ohio, Oklahoma, Tennessee and Wyoming, an amendment to the constitution is rejected unless it receive a majority of all votes cast at the election in which it is submitted. In Mississippi in 1902, a proposed amendment which would permit the adoption by a mere majority vote of the electors voting thereon was rejected. Rhode Island's Constitution requires that an amendment to be adopted must be approved by three-fifths of the electors of the state voting thereon, and New Hampshire's Constitution by two-thirds of the electors voting thereon. We see, therefore, that, while the tendency among the states is to make it easier for the people to vote on proposed amendments, the tendency is to make it more difficult to amend the fundamental law so far as the quantum of the vote is concerned. Why should not this be so? A great deal of confusion has arisen in the public mind as to the distinction between the Constitution and acts of the Legislature. The fact that the Constitution is the people's law and acts of the Legislature are oftentimes the politicians' law is overlooked. This confusion has largely been brought about by the sophistries of demagogues who have sought to deceive and mislead the people for selfish purposes. These demagogues have charged the courts with being reactionary and against the people in holding legislative acts unconstitutional when, as matter of fact, the courts were acting for the people in maintaining the integrity of their constitution against the encroachments of the politicians in the Legislature. When the people have adopted a Constitution, I believe they should be given an easy method of reaching a vote upon proposed amendments, but no less than a vote of two-thirds of the people voting at that election, voting one way or the other, should be sufficient to amend the Constitution.

In 1860 two amendments to the Massachusetts Constitution were adopted by receiving only 3.3 per cent. of the votes cast for Governor at the same election. Such a method is simply a farce. It is an amendment by default. Defaults should not be allowed in so important a matter. Unless interest enough can be aroused to induce at least two-thirds of the electors voting at a general election to vote upon the adoption of a Constitutional Amendment, it ought not to be accepted. When the people really want a thing, they will turn out and vote for it. For instance, in 1896,

in our own State, when the proposed amendment is relation to the Forest Preserve was up, over a million people voted upon the question — 73 per cent. of the entire vote — and over seven hundred thousand votes were cast against it. In Alabama, in 1901, the votes cast for and against the new Constitution was 117 per cent. of the general election vote for officers. And there was a similar vote in Florida in 1906. I hope the Committee will accept my amendment and as amended that it will prove to be the amendment proposed by the Committee.

The Secretary — By Mr. Austin. On page 5, line 18, strike out all after the word "approved." On page 5, strike out lines 19 to 26, inclusive.

Mr. Austin — The only reason I introduce it is because I think the whole subject in that respect is covered by the amendment to the Finance article which has already passed through the House.

Mr. Hinman — Mr. Chairman, the Finance article was before the Convention in Committee of the Whole before it was advanced to third reading, by agreement with Mr. Clinton, which I publicly expressed in Committee of the Whole. It was arranged, and I thought satisfactorily, that the proper place for such an amendment was in that section of the Constitution dealing with concurrent submission, and that it was left in the Finance article only pending its being placed in this article and approved by the Convention, with the understanding that it would be modified in the Finance article afterwards if approved by the Convention. If I am wrong in this matter, I should be glad to be corrected by the Convention.

Mr. A. E. Smith — Mr. Chairman, I offer the following amendment.

The Secretary — By Mr. A. E. Smith. Page 1, line 4, take out the brackets; on page 2, strike out the brackets on lines 2, 7, 11, 14 and 21.

Mr. A. E. Smith — I understand my amendment is accepted by the Committee?

Mr. Wagner — No objection.

Mr. A. E. Smith — No objection.

Mr. Ostrander — Mr. Chairman, in some of these enactments, we seem to proceed upon the theory that doubtless we are the people, and wisdom will die with us. I remember hearing of a case which was under much debate, as the story goes, in the Court of Appeals, and three of the judges had expressed themselves one way, and three the other way, and the fourth judge reluctantly said that he did not know what the law was now, but he knew what it would be in a minute. I doubt whether we are all at all unanimous about what a good many things which are going into

this Constitution will do, at present, but we are going to be very certain of what it is going to be for twenty years to come. I have great doubt about the propriety of putting such a strangle hold as this upon the thought of the future. It is barely possible we might have an idea again in twenty years and it might be well perhaps to put it in the organic law if it happened to come along. We have listened here to a very able exposition of the thought of the evil of the law's delay. I have heard that urged with such earnestness in this Convention that involuntarily my lower jaw dropped a little. Notwithstanding all that, the seriousness with which it has been urged here, I expect that when my eyes close upon the administration of justice in this world I will see some of these legal, high-priced luminaries putting sticks in the wheels of justice just the same as we do at present. If we are going to be consistent about this, if we are going to prevent the law's delays, if we are going to get such a strangle-hold upon affairs that it is going to be impossible to change this Constitution, so that even when the idea comes along it is going to take us five years to get it working and the man gets all over wanting it that had it proposed, then don't let us find a bit of fault when another blatherskite comes along and wants to stir up the people with some proposition of recall of judicial decision or something of that sort. If there is no way to amend the Constitution, why, we will have all sorts of fellows stirring up the mob here to have recalls and have all sorts or short and speedy remedies. I think it will be well for us to recognize the fact that very possibly some good thing may be thought of within twenty years, and we should make it possible, if the people want it, to have that changed, without waiting and waiting until desire fails.

Mr. Brackett — Have you found out from the Committee what part of the Constitution is to prescribe how many votes this document that we are going to submit must have, and whether that is in accord with the provision that we are now discussing? I want it to stand so that future amendments may be made on precisely the same vote that is required for the adoption of the Constitution that we are going to submit, if I can find out what it is going to be. Perhaps the chairman of the Committee can enlighten me.

Mr. Ostrander — I will say, in reply to the gentleman, that I was taught when I was a boy that there were a good many things that were not for me to know. And, obedient to the philosophy of that, I hang up my watch in the locker, lest the crystal be cracked some of these days by the steam roller.

Mr. Cobb — Mr. Chairman, I only wish to take sufficient time to explain these amendments. I have two amendments which have been read, which are designed to restore the provision to its

original condition. I do not believe that there is any sentiment in the community in favor of making it more difficult to change the fundamental law. In fact, the discussion and the judgment and the general trend of public opinion seems to have been to the contrary. I will not take time to discuss that question further than simply to say that it seems to me when the people — particularly as to the work of a Convention — have elected a body of men for the express purpose of making a Constitution, and those men have completed their work, it might very well be that it required no ratification whatever. But, in any event, if the work of these men whom they have selected to make the Constitution is satisfactory to a majority of those who take enough interest to vote on the question, it seems to me that the Constitution ought to be adopted. I certainly do not feel that it will be popular for us to present this Constitution which makes so many quite extreme changes in the present law, have it adopted by a majority of the people who might vote thereon and then say that that document must forever remain the Constitution of the State, unless an entirely different number and a much larger number vote for a change. It also seems to me that the provision contained in the Proposed Amendment that it shall be adopted "provided the number of votes cast and counted for and against the same shall equal at least two-thirds of the aggregate number of votes cast for members of the Assembly at such election, or provided the majority vote in favor of such Amendment shall equal at least one-half of the aggregate number of votes cast for members of the Assembly at such election," might lead to some very strange results. For instance, under this Amendment, if 66 2-3 per cent. of the people voted on a proposition, and 34 per cent. of the people voted for it, it would pass; but if 49 per cent. voted for it, and no one voted against it, it would not pass. That is to say, its passing is made to depend, not on the number of people that favor it but on the number of people who vote on the proposition at all. I will not take any more time to discuss that because I have no doubt there are others who will be able to express themselves in language more clear than I am able to.

Mr. Heaton — I call your attention to the last part of the italics on page 2, "or provided the majority vote in favor of such amendment shall equal at least one-half of the aggregate number of votes cast for members of the Assembly at such election." I think that absolutely covers that.

Mr. Cobb — Supposing there are 100,000 votes cast for members of the Assembly, and 51,000 votes for the Constitution, is it passed?

Mr. Heaton — Yes.

Mr. Cobb — If there are 67,000 votes cast for members of the Assembly, and 37,000 vote for it, is it passed?

Mr. Heaton — Yes.

Mr. Cobb — If there are 49,000 people vote for it, and no one votes against it, it is not passed?

Mr. Heaton — Yes, it is passed.

Mr. Cobb — Suppose there are 100,000 votes for members of the Assembly, and only 49,000 vote for the Constitution, it is not passed, because you neither have a majority of those voting for members of the Assembly, nor have you a majority voting on the proposition.

Mr. Heaton — I think you are correct.

Mr. Cobb — So that 49,000 out of 100,000 might vote it, and it would not pass, if no one voted against it; but if 35,000 voted for it and 34,000 against it it would pass. The other amendment is designed to correct what I think is a difficulty in our present Constitution. In the proposed amendment at the beginning of Section 2, it says: "At the general election to be held in the year one thousand nine hundred and thirty-five, and every twentieth year thereafter the question, 'Shall there be a convention to revise the constitution and amend the same?'". The old constitution said: "At the general election to be held in the year one thousand nine hundred and sixteen and every twentieth year thereafter". The result of the fixing of that arbitrary date, 1916 or 1935, is that you must have a Convention in that year or you must have the question submitted that year, although you may have had a Convention the same year. For instance, at the present time our work will be submitted this fall. If it should fail of passage next year we will again have to provide for submitting the question, "shall there be a constitutional convention". Now, it seems to me that that was not the intention of the law but the intention of the law was to permit the Legislature, as it always has, to call a Constitutional Convention when they saw fit, but to insure that twenty years should not elapse without one. This amendment is prepared to meet that situation. "The question, 'Shall there be a convention to revise the constitution and amend the same?', shall be submitted to the electors of the state for their decision thereon at such times as the legislature may by law provide"— that is the present Constitution and has always been so; but, instead of saying "in the year one thousand nine hundred and thirty-five," I continue — "and, in any event, at each general election next ensuing the expiration of a period of twenty successive calendar years since the last previous submission of such question." That provides an automatic period of time. For instance, if that were in force now, the question would be submitted twenty years from this year; if

there were a Convention then, twenty years from then again. It would always postpone it twenty years from the time, when the question might be submitted either by act of the Legislature or by having reached the time appointed in the Constitution. That is all I care to say.

Mr. Parsons — I have offered an amendment to strike out the words in italics in lines 15 to 21, on page 2. Mr. Cobb, in one of his amendments, proposes to strike out the words in italics in lines 4 to 9 on page 3.

Mr. J. G. Saxe — Mr. Wickersham has already proposed that amendment.

Mr. Parsons — Mr. Wickersham has offered an amendment which covers the two. I listened with great interest to what Mr. Hinman had to say and yet I heard nothing which suggested why we should make a change in the present provisions in our Constitution. There was no suggestion that it has worked badly; that amendments have been adopted which ought to be changed. While we do provide that bills must have a majority vote in the Legislature, that is a rule peculiar to New York. It does not apply in Congress, for instance. A majority of a quorum there passes legislation. My recollection is that it was adopted here for the special purpose of insisting upon roll calls. We do not have in this State really the principle of majority rule. In most matters our principle is a principle of plurality rule — whoever gets the larger number of votes. We do not wait until a man who goes to the Assembly gets a majority even of the votes cast at the election; still less, that he gets a majority of the votes in his district. We abide by the result as shown by the man who has the plurality. It seems to me that there is no force in the suggestion that we should tie ourselves up in connection with constitutional amendments. It is regrettable that more people do not take interest enough, but those who do take an interest in them are the more thoughtful. Why should the thoughtful have the result of their thought burdened by compelling the thoughtless to vote upon the question? Are we not going to reach a better, more intelligent result if we abide by the majority decision of those who vote upon the proposition?

It seems to me that this is a step in the wrong direction. As Judge Ostrander has pointed out, it is making it more difficult to amend the Constitution at a time when there has been a cry that it was too difficult to amend it; and that you are inviting opposition and accomplishing nothing by your plan. I wish also to call the attention of the Committee to two things. One is that if this rule now proposed by the Committee on Future Amendments had been in force in this State, most of the Constitutional Amendments that have been passed since we have had a Constitution

would not have been passed, other than those which composed whole Constitutions. Mr. Steinbrink informs me, and I think that the figures bear it out, that there is not a single Constitutional Amendment adopted since the Constitution of 1894 was adopted which would have passed had this rule been provided. I do not know about the bond issue. I want to call the attention of the committee to something in the history of the Constitution. If you have with you your Legislative Manuals, you will see the votes on the various Constitutional Amendments since 1777. I find that in 1833, for instance, they voted in New York city on a Constitutional Amendment which would allow the people of the city of New York to elect a mayor. The vote in favor was 48,977. The vote against was 1,936. The vote was 25 to 1 in favor, and yet if this provision had been in the Constitution the amendment would have failed, because, as you will see by comparing the vote on the amendment to authorize a reduction of the duty on salt, there were over 100,000 votes cast in the election. On the New York city proposition there were just about 50,000, which was less than two-thirds, and the vote was less than 50,000, which was less than a majority. The same thing happened in 1845 on the abrogation of the property qualification of public officers. That carried 30 to 1, but it did not have two-thirds of the vote voting on it, nor did the proposition itself have a majority of all the votes cast in the State. The same thing is true of the amendment for the regulation of removal of judicial officers. Let me call the attention of the lawyers here to what happened in 1872 when we had a serious condition in the Court of Appeals and provided for a commission of five to dispose of the accumulated calendar. That amendment was carried by a vote of 176,038 to 9,196. There were cast in the State that year over 829,000 votes. In that case the people were in favor of that amendment 20 to 1, and yet under this rule it would not have been adopted. You can find amendment after amendment here just like that. We have — very wisely, I believe.— embodied in our Constitution, through this Convention, to be ratified, I hope, by the people, a number of new departures in government. And yet, judging from the past, we have not had the foresight to be sure that we have covered every point. There may be some details which will have to be changed and it is those very details which fail to arouse popular interest, and on which it would be difficult to get two-thirds of the vote or a majority vote on the proposition, even although those who considered it were overwhelmingly in its favor, so I submit, gentlemen — I am not going to read all of this, although it applies particularly — and I am going to call the attention of the members from Brooklyn to this fact, that they now have a city court, and I think three judges

are allowed Brooklyn, and yet with the growth in population in Brooklyn, in the next twenty years, judging from Manhattan, they will need another judge, or perhaps more, and they will have to get him by a constitutional amendment, but the history of such amendments shows that although those who vote in favor of them are overwhelmingly in their favor, with a two-thirds vote on the proposition, and not a majority of all the voters vote in favor of it — and there are other matters here which may need changes, local changes, changes in local conditions will require some constitutional changes, and it is impossible to get the vote which this amendment would require; and then, in addition, there is this consideration. Why go to the expense? I am not talking about the expense of the election, but about the expense, the tremendous burden placed upon those who favor a cause, if they had to see that enough people voted on it, no matter how general it was in effect, in order to be sure that it passed. There was a large sentiment in this convention, not by the constitution but by law to abolish direct nominations for State offices and one of the reasons for that is to avoid the enormous expense now placed upon candidates because in a State as large as our State the expense is tremendous. Why burden the people who are advocating propositions which are generally assented to, because the figures show that it is where there is a fight that you get enough votes out. You can get two-thirds of the people voting on it where there is a sharp issue but where there is not it is almost impossible. Therefore, it seems to me that the proposal meets no demand and would really defeat worthy ends.

Mr. J. G. Saxe — Mr. Chairman, I offer the following Proposed Amendment and after the Clerk has read it I should like to ask the Chairman if he accepts it.

The Secretary — By Mr. J. G. Saxe: To insert a new section, section 5, the provisions of section 1 and section 2 herein requiring that an amendment shall only become part of the Constitution in case the number of votes cast for and against the same shall equal at least two-thirds of the aggregate number of votes cast for members of the Assembly at such election, or providing a majority vote in favor of such amendment shall equal one-half of the aggregate number of votes cast for members of Assembly shall apply to the adoption of the proposed constitution now being submitted.

Mr. Doughty — Mr. Chairman, may I have your attention for just a moment to emphasize one point that Mr. Parsons has made. In 1911, the Kings county calendar was behind four or five years. That matter did not effect the rest of the State a particle. It was entirely a matter concerning that county, absolutely local,

but if every voter in that county had voted for a provision in the Constitution for extra judges, which was absolutely necessary, and if the apathy of the rest of the State had resulted in no more votes being brought out, the people of Kings county could not, under this proposal, have had their County Judges, even when they were absolutely necessary.

That might occur in any part of the State where a Constitutional amendment was required. The Highway Improvement Law, never could have passed, if this proposed amendment had been in effect at the time it was voted upon; nor could the Workmens' Compensation Law have passed; so it seems to me that to put this proposal into the Constitution at this time, will be merely an effort to compel voters to vote, which we all know is a useless endeavor. Furthermore, the proposal would prevent localities from obtaining justice which might be so much needed in the matter.

Mr. Donnelly — Mr. Chairman, I offer the following Proposed Amendment.

The Secretary — By Mr. Donnelly: On page 2, lines 12 and 13, strike out the brackets and italics. Page 2, line 26, strike out brackets and italics. Page 4, line 15, strike out the brackets; page 4, line 16, strike out italics and brackets.

Mr. Donnelly — Mr. Chairman, I may say in support of that amendment I trust a great many of the drastic, difficult features of this Proposed Amendment will not stand in the melting pot of the Committee of the Whole. But whether they stand or not I think we should provide that any Proposed Constitutional Amendment, if an occasion arises, should be submitted to the people at a special election. The theory of the Committee here is to absolutely prevent this and to provide that at a time when the minds of the people are taken up with the election of various officials their minds shall then also be taken up with the question of the Proposed Constitutional Amendment, and that at such a time they will be required, to the extent proposed here as to population or majority, to cast their vote. Now, this is simply a further effort in this Convention to shackle the people and to prevent them from carrying out their own rights and I do not believe, if we are going to attempt to present a document of this sort to them, that they will accept it. We are presenting them with a thing with one hand and choking them off from altering it with the other. I doubt very much, in the present state of civilization if the people of the State of New York will accept such a proposition from the Convention.

Mr. Wickersham — Mr. Chairman, I move that we do now rise, report progress, and ask leave to sit again.

The Chairman — You have heard the motion. All in favor will say Aye, opposed No. It is carried.

(The President resumes the Chair.)

The President — The Convention will come to order.

Mr. Lincoln — Mr. President, the Committee of the Whole has under consideration General Order No. 45 and has recommended its passage. It has also had under consideration General Order No. 57, has made some progress on that general order and asks leave to sit again.

The President — The question is on agreeing to the report of the Committee of the Whole in respect to General Order No. 45. All in favor of agreeing to the report say Aye, contrary No.

Mr. Lincoln — Mr. President, I should have stated that General Order No. 45 was amended in certain particulars.

The President — I will put the question again. All in favor of agreeing to the report of the Committee of the Whole in respect to General Order No. 45 with amendments will say Aye. The Ayes have it and the report is agreed to. All in favor of granting leave to the Committee of the Whole to sit again on the future amendment article will say Aye, contrary No. The leave is granted.

Mr. Wickersham — Mr. President, I move that the Convention now adjourn.

The President — Without objection the Convention stands adjourned until ten o'clock to-morrow morning.

Whereupon, at 11:00 p. m. the Convention adjourned to meet Friday, August 27, at 10 o'clock a. m.

FRIDAY, AUGUST 27, 1915

The President — The Convention will please be in order. Prayer will be offered by the Rev. J. Addison Jones.

The Rev. Mr. Jones — Let us pray. Oh God of our Fathers whose mercy has not failed us in any time of our need, we bring to Thee our heart's tribute of thanksgiving for Thy guardian care and love. We thank Thee for the plenteous crops in our fields, for the increase of our flocks and of the fruits of our orchards, for the generous measure of success with which Thou hast crowned our earnest endeavors; for the comforts and joys of home and for all kindly social relations; for the precious memories of the years past, and for the bright hopes of the years to come we fervently praise Thee. Grant we beseech Thee that in our thoughts, our words and our deeds this day we may manifest the reality of our gratitude to Thee, the giver of every good and perfect gift, and may Thy good spirit lead us into the clearer light of wisdom and strengthen us to a finer loyalty to Thy purpose, so that our lives

may be in line with Thy righteous and holy will. For Thy Name's sake, Amen.

The President—Are there any amendments to be proposed to the Journal as printed and distributed.

Mr. Wickersham — Mr. President, I suggest the absence of a quorum and ask that the roll be called.

Upon the call of the roll the following delegates responded: Adams, Aiken, Allen, F. C., Angell, Austin, Baldwin, Bannister, Barnes, Barrett, Baumes, Bayes, Beach, Bell, Berri, Blauvelt, Bockes, Brenner, Burkan, Byrne, Clearwater, Clinton, Cobb, Coles, Cullinan, Dahm, Dennis, Deyo, Dick, Donnelly, Donovan, Doughty, Dow, Dunlap, Dunmore, Dykman, Eggleston, Endres, Eppig, Fancher, Fobes, Foley, Franchot, Gladding, Green, Greff, Haffen, Hale, Harawitz, Heaton, Hinman, Johnson, Jones, Kirby, Landreth, Latson, Law, Leary, Leggett, Lennox, Lincoln, Linde, Lindsay, Low, McKinney, Mandeville, Martin, F., Martin, L. M., Marshall, Mathewson, Meigs, Mereness, Nicoll, C., Nicoll, D., Nixon, Nye, O'Brian, J. L., Olcott, Ostrander, Owen, Parmenter, Parsons, Pelletreau, Phillips, S. K., Potter, Quigg, Reeves, Rhees, Rodenbeck, Rosch, Ryan, Ryder, Sanders, Sargent, Saxe, J. G., Saxe, M., Schoonhut, Schurman, Sears, Sharpe, Shipman, Slevin, Smith, A. E., Smith, E. N., Smith, R. B., Smith, T. F., Stanchfield, Standart, Steinbrink, Stimson, Stowell, Tanner, Tierney, Tuck, Unger, Vanderlyn, Van Ness, Wadsworth, Wafer, Wagner, Ward, Webber, C. A., Weber, R. E., Weed, Westwood, Whipple, White, C. J., Wickersham, Wiggins, Williams, Winslow, Young, C. H., Young, F. L., President.

The President — One hundred and nine have answered to their names. A quorum is present. Are there any amendments to be proposed to the Journal? No amendments being proposed, the Journal stands approved as printed. Presentation of memorials. Communications from the Governor and Other State Officers. Notices, motions and resolutions. The Secretary will call the roll of districts.

Mr. Tuck — If this is the proper time, I would like to present an excuse for Mr. Curran who is sick and confined to his bed and who will return just as soon as he is able to.

The President—All in favor of excusing Mr. Curran will say Aye. Contrary, No. The excuse is granted.

Mr. Clinton — I desire to make a motion to discharge the Committee on Revision from the further consideration of the amendment to Section 8 of Article 7, being the Canal Committee amendment, and ask that the same be recommitted to the Committee of the Whole with instructions to make the following amendment and report immediately, and that the amendment hold its place on the order of third reading.

The Secretary — By Mr. Clinton. Resolved, That the Committee on Revision be discharged from the consideration of Proposed Constitutional Amendment, Section 8, Article 7, being Printed No. 779, Int. No. 710, and that the same be recommitted to the Committee of the Whole with instructions to make the following amendments, and report immediately, and that the said proposed amendment retain its position on the order of third reading. Page 2, line 27, after the word "sold" add the following, "such general laws may provide for the abandonment of portions of the existing canals which by reason of the completion of parts of the Barge canal shall have become unnecessary for purposes of navigation and shall be certified by the superintendent of public works to have become so." Page 1, line 9, immediately before the bracket insert, "when necessary in the opinion of the superintendent of public works easements in canal lands may be granted for purposes of bridge construction provided that such easements shall not interfere with or impair the use of the canals." Page 3, line 6, before the word "waters" strike out the word "the", and from the same line the word "under" and substitute "thereunder". Page 3, line 7, strike out the words "any such lease".

The President — Are you ready for the question? All in favor of the resolution will say Aye, contrary No. The resolution is agreed to.

Mr. Clinton — Mr. President, I understand under the rules recommittal to the Committee of the Whole is self-executing.

The President — It is self-executing. Under the resolution the amendment is recommitted to the Committee on Revision. The Secretary will continue the call of districts. Reports of standing committees.

Mr. J. L. O'Brian — Mr. President, the Committee on Rules submits the following report.

The Secretary — The Committee on Rules recommends the adoption of the following: Resolved, That when the Committee of the Whole resumes consideration of general order No. 57, the final vote thereon be taken within one hour and that speeches of individual members be limited to ten minutes each, except that the introducer of the bill be allowed twenty-five minutes in closing debate.

Mr. A. E. Smith — What number is this on, Mr. President?

The President — Future amendments, No. 57. All in favor of the resolution will say Aye. Contrary, No. The resolution is agreed to. Further reports of standing committees. Reports of select committees. Third reading. Is there objection to dispensing with the third reading calendar for to-day? The Chair hears none. Unfinished business in general orders. Special orders.

The Convention will go into Committee of the Whole in further consideration of the calendar. Will Mr. Lincoln resume the Chair?

(Mr. Lincoln resumes the Chair.)

The Chairman — The Convention is in Committee of the Whole on general order 57.

Mr. Cobb — Mr. Chairman, last evening I offered three amendments to this provision.

Mr. Schurman — Mr. Chairman, I rise to a point of order. I am very desirous of hearing Mr. Cobb and it is impossible to do so.

The Chairman — The Committee will come to order. It is impossible for the delegates to hear Mr. Cobb.

Mr. Cobb — Last evening I offered three amendments to the Constitution. A later amendment offered by Mr. Wickersham covers completely, and goes somewhat further than the second and third amendments which I offered. I therefore withdraw amendments two and three.

Mr. D. Nicoll — Mr. Chairman, I would like to offer an amendment.

The President — The Clerk will read the amendment by Mr. D. Nicoll.

The Secretary — By Mr. D. Nicoll. On page 2, line 17, strike out the word "two-thirds" and insert "one-half". On line 18, strike out the words "or provided the majority vote in", and all of lines 19, 20 and 21 to the word "such".

Mr. D. Nicoll — Mr. Chairman, the purpose of my amendment is to compromise between the provision of the present Constitution and the extreme provision suggested by the Committee on Future Amendments. The present Constitution — that is, the provisions relating to future amendments are the same to-day as they were in the year 1821. That is, the provisions about future amendments found their way into the Constitution of 1821, were taken over by the Convention of 1846, again by the Convention of 1867, and again by the Convention of 1894. And what we are asked to change here is a policy with regard to future amendments which has been in force since 1821. Now, of course there must be some great reason for such a change, for a constitutional provision as old as that is not to be set aside lightly. What is the reason for the change? The only reason I can find for a change is the extraordinary apathy and indifference manifested in late years towards amendments to the Constitution, and I confess I cannot account for it. There were eight amendments made to the Constitution of 1821, one amendment made to the Constitution of 1846, and after

the work of the Convention of '67 was rejected and the Commission of '72 took over that work and reported a number of amendments, all those amendments were carried by substantial majorities, a very large per cent of all the electors of the State voting one way or another. But what is the experience of our day and generation and especially of the last ten years? Why substantially, there is a most insignificant percentage of the electors who vote upon amendments. The people have lapsed into a condition of lethargy and indifference with regard to the amendment of the fundamental law which is almost inexplicable. I think, therefore, that something should be done to destroy that indifference which all men agree is the great enemy of republics; something must be done to stimulate the attitude of the people toward the organic law. That, of course, is the purpose which the Committee has in view, but let us see to what their amendments lead. I am assuming that we have 1,500,000 votes in the State of New York. Those who voted in the presidential election of 1912 amounted to 1,587,000 but let us assume that the vote is 1,500,000. Under the proposal of the Committee, "provided the number of votes cast and counted for and against the same shall equal at least two-thirds of the aggregate," you would have to have a million votes on the subject, voting pro and con on a constitutional amendment, before you could carry it. The amendment goes one step further, "or provided the majority vote in favor of such an amendment shall equal at least one-half of the aggregate number", that is, one-half of 1,500,000 is 750,000. You would have to have 750,000 votes in favor of the constitutional amendment before you could amend the Constitution. Of course, gentlemen, in the present state of affairs that is impossible. You never could amend the Constitution under those circumstances. No one here can imagine that you are ever going to get 750,000 votes in favor of voting, would carry an amendment.

Mr. Barnes — Five hundred thousand and one, with a million voting, would carry an amendment.

Mr. D. Nicoll — What?

Mr. Barnes — Five hundred thousand and one, with a million voting, would carry an amendment.

Mr. D. Nicoll — Provided the majority voting in favor of such amendment was equal at least to one-half of the aggregate number of votes cast for Members of the Assembly.

Mr. Barnes — That is one proposal, but there is an alternative.

Mr. D. Nicoll — I know there are two.

Mr. Barnes — The alternative is that, if a million vote, five hundred thousand and one would carry it.

Mr. D. Nicoll — Very well, if you take five hundred thousand and one, it is just about the same. You never get anywhere.

Mr. Wickersham — Is it not a fact that on no amendment since the one voted for on September 8, 1910, has there been, not only not a million votes but on no amendment has there been more than about 700,000 votes pro and con?

Mr. D. Nicoll — You have the figures there.

Mr. Wickersham — I have the figures here taken from the Legislative Manual. The maximum vote, according to the statement in the Legislative Manual for 1915, cast on any proposal pro and con was on one of the amendments voted for September 4, 1913, when the aggregate vote was 705,411, and the smallest vote was on one of the amendments voted for September 7, 1911, which was 608,623.

Mr. Marshall — I think your figures are wrong, if I may interrupt.

Mr. Wickersham — I take them from the Legislative Manual.

Mr. D. Nicoll — I am perfectly willing to yield to the two gentlemen. I have very little more to say. In order to meet the situation which we all perfectly well understand, I propose this amendment, namely, "provided the number of votes cast for and against the same shall equal at least one-half of the total number of votes cast for Members of the Assembly." Now that seems to be a reasonable compromise of the situation. If we do anything at all we ought not to go farther than that, in my judgment.

Mr. Dunmore — Mr. Chairman, may I ask the gentleman a question? I understand you made the statement that you could not get a million votes on a Constitutional amendment. Is the gentleman aware that in 1896 on the amendment in reference to the forest preserve considerably more than a million votes were cast for and against the amendment?

Mr. D. Nicoll — In what year?

Mr. Dunmore — 1896.

Mr. D. Nicoll — I have been speaking of the last decade.

Mr. J. L. O'Brian — Mr. Chairman, I desire to offer the following amendment.

The Secretary — By Mr. J. L. O'Brian. Page 1, lines 7 and 8, strike out the italicised words, "after sitting in joint session for the discussion thereof and".

Mr. J. L. O'Brian — I favor the adoption of the amendments offered by Mr. Wickersham. The effect of my amendment and of Mr. Wickersham's amendments, if adopted, will be to leave in the proposal of the Committee a provision that the proposed constitutional amendment should be printed and on the desks of the members for five days prior to passage, but the remaining new matter would be stricken out. I am very much opposed to this suggestion on the part of the Committee on Future Amendments. We are asked to change a practice which, if I understand Mr.

Nicoll correctly, has been in existence since 1821. There has been no reason suggested for this change except that by this artificial means we are going to stimulate the intelligence of the public on voting for and against constitutional amendments. I do not believe that the members of this Convention fully realize the dangers involved in this proposal. This proposal — you may take it any way you like — is a proposal intended to make it more difficult for the people to amend the organic law of the State. Three or four years ago when some of us were combating what we thought were heresies, we told the people that the remedy was not recall of decisions, the remedy was not the initiative, referendum, etc. The remedy, we told them, was that, if the method of amending the Constitution was not satisfactory, it should be made easier for the people to amend. That was my position, and it is my position to-day that if any change was needed, the change should be in that direction. Yet the proposal of this Committee is that, instead of that, we should turn back the hands of the clock and make it more difficult for the people to amend the organic law. No commission has been given to this body by any party or by any force of public opinion to warrant such a radical interference with the present method of amendment. If, as Judge Ostrander said in his very pithy remarks, we were to adopt this proposal of the Committee, we would have back again all of the wild men with their patent nostrums for changing existing law. The present Constitution has worked satisfactorily. I wish to emphasize that you have not heard, you will not hear in this debate, of a single obnoxious or pernicious amendment which has been adopted by the people in nearly a hundred years under the existing system. Why, then, should there be this radical interference with the existing order? I think the adoption of this proposal would be resented. I know that it would be resented by the public at large. My amendment is directed to a phase of the amendment which has not been under discussion. You are requiring under this amendment that a constitutional amendment shall be passed upon by both houses of the Legislature sitting in joint session for the consideration thereof. That is a novel and unheard of doctrine. The only occasions that I recall when the two houses of the Legislature meet in joint sessions are the occasions when they elect a regent; when the body of the Senate marches into the body of the House and both sides sit here looking like the honorary pallbearers at a funeral, and one member makes a speech for one regent and the opponent makes one for another and the vote is taken and the Senate files out. Now, if you put in this provision that is contained here for joint sessions, the chances are you will never have a joint session, because toward the end

of the legislative session, every former legislator in this body knows that the work becomes so congested that there would be no time for the two houses to get together and engage in a parliamentary discussion. You are trying to impose upon the people here indirectly a new and unheard of restriction, and asking that a new legislative procedure shall be embarked upon before the Legislature can adopt a proposed constitutional amendment. Now, gentlemen, I am very earnestly and very strongly opposed to this whole proposed change in the existing method. I do not wish to put into the Constitution of the State a table of fractions for the voter to solve with the aid of logarithms which is wholly unnecessary. There is no demand for it; no reason for it; no obnoxious amendment has been adopted to the present date, and the sentiment of the people, as I think most of you agree, is all the other way, that we should not make it more difficult. If we are not going to make it easier, let us be wise and accept the method that has been tried out for nearly a hundred years and with which there has been no dissatisfaction.

Mr. M. Saxe — For the benefit of the Committee I should like to read part of a letter from Mr. Joseph H. Choate, the President of the last Convention, a letter which deals with a number of questions which he assumed that this Convention would consider; and among those questions he refers to this one of future amendments. This letter was written to me by Mr. Choate last October at a time when we were doing something to stimulate interest in the election of delegates to the Constitutional Convention. Mr. Choate said: "There is one subject, not mentioned in the platform of either party, that I personally am very desirous that the coming Convention should consider, and that is, what means can be adopted by it to prevent the addition of future amendments to the Constitution by the vote of a majority of a handful of voters. Under the provisions of the existing Constitution in respect to amendments, it has repeatedly happened, I believe, that amendments on important subjects have been adopted by obtaining the affirmative votes of a few thousand voters, who cared or knew enough about the subject to vote at all upon the question. The majority of those who vote, however few, decides the matter. This evil practice certainly ought not to be continued. It would probably be too much to expect that anything like all the voters of the State will ever vote upon a Constitutional amendment submitted to them by the Legislature; but there may well be some limit imposed, as, for instance, requiring a majority of all legal voters, which would insure the defeat of any amendment that did not receive the affirmative votes of one more than 25 per cent. of the legal voters of the State." I submit that for

the consideration of the Committee, because Mr. Choate's suggestion means an affirmative vote of 25 per cent., whereas the Committee's proposal practically means an affirmative vote of 33⅓ per cent. I submit it particularly at this time in answer to the observations of Mr. O'Brian of Buffalo, because I think the people of the State of New York still have the utmost respect for the opinion of Mr. Joseph H. Choate.

Mr. Barnes — I think this Convention, especially the Republican part of it, ought to be very thankful to Mr. O'Brian of Erie for the presentation that he has made of the ideas of government which he advances. To my mind they are essentially contrary to the meaning of the Republican party. The Constitution, as you all know, is the law made by the people. If the people themselves do not understand that it is our duty to educate them to that idea. To assume that amendment of the Constitution is in itself a virtue is error. You will remember, all of you, the attack made upon the Court of Appeals for the decision in the Ives case. The argument was made that that decision was contrary to public opinion and that the court should have followed the doctrine of Mr. Dooley and be guided by the election returns instead of the Constitution made by the people of the State. That was not the duty of the court. The duty of the court is to interpret the Constitution, the law made by the people, and not to support the violation of it by the legislative body. The thought has been prevalent in this State, and is constantly voiced by the press that whatever is, is wrong. The newspaper business, as you all know, has come to be one which is conducted at a loss on the sale of the product. White paper in a newspaper now costs more than the newspaper gets for its paper, and necessarily a newspaper must depend entirely upon its advertising patronage, the amount of which depends upon the extent of the circulation, and the newspapers of the day, therefore, are compelled, for their own preservation, to speak of the hour, rather than for the future, or to defend fundamental principles. It was argued in that case that the Court of Appeals erred, because it was not public opinion. The Legislature followed what was supposed to be public opinion and passed the amendment to the Constitution, Article I, Section 19, which was presented to the voters, in the fall of 1913, and was carried by a vote of about 500,000 to 200,000, with no campaign whatsoever waged against its passage. In that instance, with the proposal made by the Committee on Future Amendments, the workmen's compensation amendment would have carried, as it received over 500,000 votes. The contention which Mr. O'Brian makes, that we ought to have it easier to amend the Constitution —

Mr. J. L. O'Brian — I think you misunderstood me. What I intended to say and what I think I did say was that I was satisfied with the existing arrangement. I said that what was said by myself and others to the agitators of a few years ago was that if their contention was right, then the remedy would be to make it easier to amend the Constitution, and not to adopt the remedies they suggested. I do not advocate making it easier to amend the Constitution.

Mr. Barnes — You do not wish to make it what might be termed hard?

Mr. J. L. O'Brian — I do not.

Mr. Barnes — The argument is, is it wrong that the fundamental law of the State should be established by a majority of the voters of the State?

Mr. Foley — Did I understand you to say the total vote, Mr. Barnes, on the Workmen's Compensation Amendment was two-thirds of the total vote cast?

Mr. Barnes — I am wrong. There was five hundred thousand for it but not a million voting.

Mr. Foley — It was less than 50 per cent.

Mr. Barnes — I was wrong on that. I remember it was over five hundred thousand. But that is wide of the mark. The figures which are going to be presented here of past votes do not touch the subject. If you establish the principle or the rule that it is going to require a majority of all the votes cast or a majority of all votes cast upon the amendment, two-thirds voting, you will get the expression pro and con. At the present time Constitutional amendment ballots are cast aside. Mr. Nicoll very wisely referred to the fact that voting is less, but he did not give the reason. He said he did not know the reason. So far as I know it is because political organizations in the past have paid no attention, and in their interests to get their candidates elected, have practically told the ignorant voter to neglect the amendments, not to pay any attention to them. That I know has been the practice. But it is not the detail of this proposal, it is not the exact method that is proposed that is, to my mind, the question at issue. The question at issue is that the voter should be educated in every possible way that the basic law is their law; that the legislative law is the law made by their representatives. In the amendment which this Convention defeated, which I offered, placing an inhibition upon the Legislature to grant privilege or immunity, I did not raise the issue that the people themselves could not grant it through their Constitution, and that is their right; but I do not believe that the Legislature should have it, and therefore, believing that the education of the voter toward the Constitution is the essential education

for the voters of this State, we ought to make them understand that they can change that law, but not that it is a trivial matter, unimportant, easy to be done. Therefore, you should put restriction now that they may know that this is their law. They should learn it; they should understand it; they should comprehend that it is their most important of all bill of rights, for the protection of them against tyranny of government or privilege-granting legislatures. One more point which I forgot to mention. I have offered an amendment to this bill which, if you have looked it over, you have seen simply provides that constitutional conventions in the future shall assemble in December, right after the casting of the votes, and that they must submit their work ninety days instead of six weeks which is now the constitutional provision, before the election. It would seem that that is a wise thing to do. If the Convention should meet in December and could organize, committees could be appointed, and in some way or other could arrange with the Legislature during the winter months and then could assemble during the end of April with all of its committees and everything in working order, and could get its work done by the first day of August, and give the voters three months in which to consider the amendment.

Mr. Franchot — Mr. Chairman, I rise not so much to make an argument in opposition to the proposal of the Committee and in favor of an amendment to that proposal suggested by Mr. Wickersham as to draw an analogy and point out an inconsistency which is involved in favorable action upon the proposal of the Committee. This Convention has advanced to the order of third reading the Cities article which provides for the amendment of charters, the revision of charters by a majority vote of those voting upon the question of whether or not the revisions shall be adopted. It would be strikingly inconsistent for us at the same time to write into the fundamental law a different requirement with respect to the amendment of the Constitution. But that is not all.

Mr. D. Nicoll — Do you think that a city charter rises to the dignity of the Constitution?

Mr. Franchot — I think this, Mr. Nicoll, that there has been a tendency in this Convention — I don't say that it is an improper tendency — to write into this fundamental law of ours, matters of detail, matters of local interest, as for instance the matter of the judiciary in the city of New York only; as for instance the question of canal slips, naming them. The tendency has been so to put local and particular regulations into this present Constitution that it will be all the more necessary that it shall be amendable as in the past, without more difficulty than has been in the past. I say that we have done a great deal to assimilate this Constitution to

the charters of the cities. Now that was not the point I was going to make, which is very brief; the analogy which I would like to draw is between the principle involved in this amendment and the principle involved in one of the proposals of the Judiciary Committee in the judiciary article which was adopted for a fundamental reason expressed by the President of this Convention, and I do not doubt acted upon by the members of this Convention in approving the proposal, namely, that provision of the Judiciary Article which makes easier the impeachment of a public officer. When that question was under discussion, the argument was made by Senator Root in the following language: "I say it is the inadequacy of the remedy of impeachment that has led for the widespread demand for recall, and those of us who believe that that would be a great misfortune are bound to make the legal remedy, in which is opportunity for the public official to require proof, be confronted with the witnesses and to have opportunity to cross-examine and give his evidence and have judicial judgment — make that so adequate that we will hear no more of this demand for recall." Now, gentlemen of the Committee, the Progressive party is dead, or almost dead, and I am one of those who would join in saying *requiescat in pace.*

Mr. A. E. Smith — *In pace.*

Mr. Franchot — I think after Mr. Smith has disclaimed expert knowledge of the English language he is somewhat inconsistent in attempting to speak on the Latin. But, not to be diverted from the point, how was the Progressive party able to come into being? If you send your minds back to the momentous day of the split in the Republican party, you will remember that the leader of the Progressive party was enabled at that time to seize upon a real, genuine, earnest, underlying feeling among a great number of our people that the fundamental law of this State was not sufficiently responsive to the public will. And how was it that the advocacy of the recall of judicial decision became a prime tenet of the Progressive party. It was a corollary to the advocacy of what they called social and industrial justice. The claim was made that judges should not be enabled to obstruct the wheels of progress, and so they proposed the nostrum of the recall of judicial decisions. Now, I say that our action should be directed towards this end, of forestalling public sentiment of this kind, of making it difficult for demagogues to stir up the populace.

The Chairman — The Chair will call the attention of the Committee to the fact that twenty-five minutes more remain before the time set by the rule for taking the vote. Twenty-five minutes, the Chair understands, was allotted to Mr. Marshall, the introducer of the amendment. What is the pleasure of the Committee?

Mr. Marshall — Mr. Chairman, I am entirely willing to have the time extended provided I have the twenty-five minutes because there are certain phases of this amendment which have not been touched upon which are of vital importance, especially Section 3.

Mr. Chairman — The Chair, of course, cannot of its own volition extend the time beyond the hour of 11:20, at which time the vote will have to be taken under the special rule and it is now five minutes of eleven.

Mr. Byrne — It does seem on the question of amendment to our organic law, the organic law of the State, that we might give sufficient time to this subject. I do not see that there is any more important subject. You are now dealing with this question of how shall we amend this basic law and I think we should be given sufficient time to discuss it.

Mr. Wickersham — I move that we rise, report progress and ask leave to extend the time by twenty minutes, and that will give an opportunity for three or four five minute speeches and then we will come to a vote —

Mr. Marshall — Make it 12 o'clock.

Mr. Wickersham — Twelve o'clock; we will come to a vote not later than 12 o'clock.

The Chairman — The Chair understands the motion of Mr. Wickersham to be that the Committee now rise, report progress and ask leave to extend the time until twelve o'clock, at which time the final vote is to be taken, the time to be allotted to the introducer to remain the same.

Mr. J. L. O'Brian — I desire to offer an amendment to Mr. Wickersham's motion, that, with the exception of the introducer of the bill, all speeches be limited to five minutes each.

Mr. Wickersham — I accept that amendment.

The Chairman — You have heard the motion by Mr. Wickersham as amended by Mr. O'Brian. Are you ready for the question? All those in favor of the motion as amended say Aye. All opposed, No. It is carried.

(The President resumes the Chair.)

The President — The Convention will come to order.

Mr. Lincoln — The Committee of the Whole have had under consideration General Order No. 57 and have made further progress, have risen and ask that the time fixed by the special rule be extended until twelve o'clock for consideration of the measure, and that with the exception of the time allotted to the introducer of the measure, the remarks of the speakers be limited to five minutes each.

The President — The question is upon agreeing to the request of the Committee of the Whole. All in favor of agreeing will say Aye, contrary No. The Ayes have it and the request is agreed to.

The Convention will return to the Committee of the Whole and Mr. Lincoln will please resume the Chair.

(Mr. Lincoln resumes the Chair.)

The Chairman — The Committee will come to order.

Mr. Schurman — I just want to make one or two remarks on the subject. Mr. Nicoll has pointed out that these provisions which are now before us have been in the Constitution of the State for nearly a hundred years. Neither he nor anybody else has pointed out or shown that under the operation of these provisions the State has suffered any ills. Constitutional amendments have been adopted by small majorities. No one, however, has endeavored to show that any constitutional amendments ought not to have been adopted, or that their adoption worked any injury to the commonwealth. Mr. Nicoll has pointed out, Mr. Hinman has pointed out, that there exists great apathy in the minds of the public on the subject of constitutional amendment, and the only argument that I hear in favor of the proposed amendment is that it is a means of dissipating that indifference and apathy. You propose one day to dispel ignorance by a constitutional amendment, and the next day you propose to banish ignorance and apathy by constitutional amendment. I am exceedingly skeptical of your ability to produce a result by either of these means. Other means have been adopted in other countries. This evil exists in all democracies. Switzerland is perhaps the most perfect democracy in the world. This evil of apathy and indifference exists in Switzerland. They have endeavored there to require voters under penalty of a fine to go to the ballot box and deposit their ballots. But they cannot prevent voters from dropping a blank, and the fact is that under the operation of this law in Switzerland, on the average exactly 20 per cent of the ballots cast have been blank. Another way of dealing with the question is the way adopted in Oregon. There the percentage of voters who vote at the polls is exceedingly high. It is between 70 and 80 per cent, whether the matter on which the vote is taken is a constitutional amendment or a statute. In Oregon, they have adopted a more effective method. They issue a book in which arguments pro and con for each proposed constitutional amendment or statute are submitted, and these volumes are circulated among the voters. Undoubtedly that circumstance and the unusual intelligence of the people of Oregon have combined to produce the high percentage of votes that the figures show us in that State. As far as our own State is concerned, I think I could be willing to see some change. I am not quite clear. I think some such suggestion as that made by Mr. Choate might be wise to adopt. But I am perfectly persuaded in my own mind that, if you are aiming at the cure of apathy, you

will not accomplish it by fixing any such minimum percentage of voters as that contemplated in this bill.

Mr. Doughty — Mr. Chairman, I offer the following amendment.

The Secretary — By Mr. Doughty: Page 5, lines 13 and 19, change to read "shall have approved and ratified". Page 5, line 22, change the word "now" to "then". Page 3, line 19, change the word "mileage" to "reimbursement for railroad fare".

Mr. Byrne —As Mr. Nicoll has said, this provision has been in the Constitution since 1821. He wonders at the apathy and lethargy which now exist. I almost thought that Mr. Schurman was looking over my shoulder when he said you are going to banish ignorance one day and the next day you are going to dispose of lethargy in this matter. The lethargy exists because of this: we are all selfish. There is no getting away from it. The people have no interest, or very little, except in those things which immediately affect them. If it is a matter of taxes and they own property, they are going to be very much interested. If it is a matter of the cost of living, they are going to be very much interested. But this matter of politics to them, gentlemen, is very much, as Job Hedges says, "Bunk". They believe that politics is carried on by a few people and it doesn't make very much difference who carries it on. They are not interested in the subject. You speak about home rule for Ireland, you would suppose that the people of Ireland, all of them, in all parts, would be deeply interested in the question, and yet a relative of mine who was over there during the great agitation asked a number of them, "Well, what about the home rule matter?" To his absolute surprise, one of them answered "Well, Johnny Redmond and the byes must have their fun anyway." That is the way they look on these political questions. Men who are active in politics talk politics, they associate with others who are interested in politics, and they suppose that every one outside is thinking of it. They don't think anything about it at all. Yes, there are a lot of people, as Mr. Wagner suggests, who do not know that this Convention is even in session.

Mr. Wickersham — Is it possible that the gentleman thinks that any citizen in the State of New York does not know that we are in session here?

Mr. Byrne — I have been asked the question by men who I supposed knew better, since I have been here — and they are men in the upper part of the State —"Whom are you going to elect in the Convention?" Now, that is a fact. Mr. Barnes has suggested that you must educate the people in the Convention. Let me tell you something. I made a speech at a certain place last fall — I think it was the only one in which I dwelt mainly

on what this Constitution was going to do. I thought it was a mighty good speech. I explained it all, all about the basic, organic law, and what we needed and what we were going to do. As I was passing out an admirer of mine caught my hand and said: "Ed., the next time cut out that constitution stuff." They don't want to hear it. They don't want to hear anything about it. As Mr. O'Brian says, we do not want to make it harder to amend the Constitution; we want to make it easier. Along about in October the people are going to receive these amendments which we are going to propose to them. Mark you, in October, and in one month we expect they are going to pass intelligently upon this mass of amendments, and yet in order to pass one amendment, which may be very important, they must wait three years. That is the reason they are not interested. That is the reason they are indifferent. When they want to do something you have tied them up so that they cannot do it, so they say: "Oh, let it go. What is the use? We have got to wait three years." It should not be three years. It should be passed by one Legislature and then let the people vote upon it. Are they not as competent to pass on one amendment when it has been passed in the spring and they have had until the following fall to consider it as they will be to pass on this wonderful group of amendments we are going to hand them?

The Chairman — The gentleman's time has expired.

Mr. Foley — Mr. Chairman, it seems to me that the committee in charge of this proposition started out with the idea of preventing any amendments for the next twenty years. They seek to accomplish by indirection what Mr. Barnes in his amendment, No. 424, sought to accomplish with his usual courage and frankness. What he proposed was to eliminate the section of the present Constitution which permits any amendment, that is, Section 1 of Article XIV. He then provided for a Constitutional Convention to be held every ten years. If you write into the Constitution a provision that two-thirds must vote, you have prevented any amendments being made for the next twenty years. Mr. Parsons last night read some of the figures as to the amendments made during the history of the State. He showed the comparatively small vote cast compared with the total vote cast for members of Assembly. I find in going over it, continuing his analysis, that but one amendment since 1894, that relating to the forest preserve submitted in 1896, got more than 66 per cent.; that is, the total vote cast was more than 66 per cent. of the entire vote cast for Assemblymen. In other words, not a single amendment, with that exception, would have been adopted from 1894 down to 1914. Mr. Barnes referred to the importance

of the discussion in the Ives case, and the propaganda that followed it in the adoption of the compulsory workmen's compensation amendment of 1913. That amendment only received 700,000 out of a total of 1,200,000 votes in the State, less than 66 per cent. To my mind the State has gone quite far in going to the expense of distributing the pamphlets which we give to each voter on registration, explaining constitutional amendments, giving them the form of them — the large expense of printing 1,400,000 of these proposed amendments — yet we have not accomplished a larger vote by that means. I think we have educated the voters who have voted on the question and will go to the trouble of voting on it, and it may be just as well that we get the best discrimination from the intelligent electorate. To my mind, the remedy is — and I propose to offer an amendment — if paper ballots are to be used, put the questions as to whether the Constitution shall be amended upon the same ballot with State and local officers. In that way you have got a picture and a reminder before the voter that the questions are to be passed upon. As it is now, the voter goes in with his two separate ballots, and in some cases three or four separate ballots, as in a presidential year, and he picks out his presidential ballot and he picks out the State ballot and votes them. By the time he has finished with those two he is pretty tired and he simply passes up the other questions. I think that in the districts where the voting machines are used, a larger percentage of the voters must vote upon the constitutional amendments. So I say the remedy would be to encourage the voter to remind him of his duty of placing the constitutional questions upon the ballot for State officers.

Mr. Wickersham — Mr. Chairman, I am in hearty accord with the object of those who have introduced this amendment. I think it is the most desirable thing that it should be recognized by our people that the Constitution is something more than a mere act of the Assembly. I think it is very desirable that the voters in general should have their interest in government stimulated. The fact is, there is much more interest in men than in measures, and you can always get a much larger vote in support of a particular candidate for a given office than you can get in support of some abstract measure of government. Mr. Chairman, I am fully in sympathy with the feeling that the organic law should not be open to as ready tinkering as an act of the Legislature. But experience has shown that the system which we have had in this State for so many years has worked extremely well. Unlike Mr. Byrne, I believe that it is a very valuable provision which we have now which requires an amendment proposed during the intervals between constitutional conventions to be passed by two

successive Legislatures. I find, in looking over the history of the Constitution since 1895, that 357 proposed constitutional amendments have been introduced into the Legislature. Of those, only 49 passed one session of the Legislature; only 32 passed two successive Legislatures. Of those 32, 10 were rejected by the people, 21 were adopted, and 1 remains to be voted on at the next election. Mr. Chairman, it seems to me that is the most conclusive demonstration of the value of this conservative provision. We have here evidence that it has worked well, evidence of the fact that there is no compelling cause to lead us to modify it. I fear that, instead of advancing, what is the very laudable purpose that the framers of this proposal have in view, it would only result in one of two things: either defeating the capacity to amend our Constitution at all; which would be a most unfortunate thing, or arousing opposition to the Constitution itself, which would be equally unfortunate and lead to more disastrous results. For those reasons, Mr. Chairman, I have proposed an amendment to strike out the two paragraphs in italics and I trust that that amendment will prevail, though, at the same time, I want to recognize the thought and the high purpose of this Proposed Amendment and to express my regret that I find myself unable to concur in it.

Mr. Green — Mr. Chairman and Gentlemen of the Committee: I have been sorry to hear the observations made on this floor that the people have no interest in these matters and cannot be expected to disclose any interest at the polls. I think the entire history of the votes on constitutional amendments in the past is quite to the contrary. It shows that the people have had an interest, and if you do not believe that the people are interested, put up some proposition that they do not like and see how soon they will convince you to the contrary. In 1909, there were four constitutional amendments voted on. The highest vote in the State at large for the proposition was 278,415; against, 249,576, a total of 527,991. The average vote cast at that time was slightly over a million. Yet, to have complied with the Committee amendment of two-thirds of the aggregate, would have required the casting of 138,675 additional votes; to have met the second requirement, "provided the majority vote in favor of such an amendment shall equal one-half of the aggregate number of votes cast for members of the Assembly at such election," 221,585 more votes would have been necessary. Take for illustration, my own good county, Broome; 6,815 votes were cast on the constitutional amendment receiving the highest vote and at the same election 12,100 votes were cast for members of Assembly. This vote was 1,213 short of two-thirds. The highest vote in favor of an amendment was 2,548, or 3,502 short of one-half the total Assembly

vote. Yet, those four amendments were carried in 1909. In 1911 there were seven constitutional amendments, and you will remember that the people voted them down. In 1913, there were four amendments. The Workmen's Compensation Act received the largest vote. The vote for was 510,914; against 194,497; blank votes cast, 442,104; void, 5,145. The average number of votes cast for State officers exceeded 1,100,000. Had the Committee amendment then been in force, the Workmen's Compensation Act would have lacked 27,921 votes to have equaled the two-thirds requirement and would have been 40,000 votes shy of the one-half majority for it. I would like to see something done, if possible, to remedy the dereliction on the part of electors, but how are you going to do it? I have personally participated in elections where taxpayers only were interested, in a comparatively small city. Work as hard as you may, less than 20 per cent and sometimes even less than 10 per cent in my own city of Binghamton will vote on a taxpayers' proposition to spend half a million dollars or more. When we cannot get the taxpayers interested and they wish somebody else to take the burden off of their shoulders and will not do their duty, why are you going to put a limitation on it, and why, in this matter, do you wish a limit? We have gotten along splendidly all of these years; why change now? It seems to me a striking proposition that these figures here show when the workmen's compensation proposition was adopted under this proposal it would have been just a little under the requirement and would not have passed. I sincerely hope that any reference to limitation will not pass. I have the greatest respect for the statesmen who are opposed to this proposition. It is said that statesmen seldom blunder but I have noticed that when they once do fall, they fall hard. I wish to say that the people are thinking about the actions of this Convention, they are awaking to their responsibilities, and they do not wish to be "hog-tied" so that they cannot have their say on constitutional propositions.

Mr. Austin — I propose to vote for this amendment exactly as it stands, with the exception of the last sentence, which I think is unnecessary and should have been taken care of in another amendment. I want to direct the few moments that I have at my disposal to one proposition and I also want for a moment to answer the argument made by the gentleman from Erie, Mr. O'Brian, who seemed to look upon that part of this proposal as a joke which requires the Legislature to meet in joint session and consider a constitutional amendment. My answer to this, and to all the arguments of a like character is this: If we cannot focus the attention of the public upon a constitutional amendment, let us try and focus the attention of the Legislature at least upon it I have already upon the floor of this Convention, a month ago,

related an incident which led me to introduce the amendment which has been incorporated in this proposal, to the effect that an amendment must be printed at least five days before it can be passed. This adds something to that, and, to my mind, it is one of the most valuable features of this amendment. Most all of you will recollect my relating it. The last Legislature was supposed to have adjourned at twelve o'clock on a certain day. After twelve o'clock, after the hour of adjournment, a constitutional amendment, an amendment to the basic law of this State, was introduced in the Senate, without ever having been read, without ever having been printed, passed by the Senate, brought over to the Assembly and at three o'clock in the morning, just before adjournment, it was passed. It was passed in such haste, or it was prepared in such haste, that all they did was to take the printed amendment of two years ago and introduce it as it was, and that printed amendment of two years provided that it be referred to this Legislature, that is the one last past, not to the people. It was passed in such haste that they forgot to change that clause and, as passed, the amendment did not provide for submission to the people, and the attorney-general has held that it cannot be submitted, for that reason. Now, I am not attacking the amendment, nor the good faith of those who caused it to be introduced in this way and passed, but I merely point to what is permitted under present conditions, and I say if you can adopt an amendment which will at least focus the attention of the Legislature upon these things, you will have done something, that is one of the valuable features of this bill, and so far as I am concerned, I am not afraid that any wrong will ever result from requiring the percentage of votes provided in this bill to vote for an amendment before it shall become effective.

Mr. Wagner — Mr. Chairman, of course the crime is somewhat mitigated when the facts are known. That was an amendment which had been adopted once before by the Legislature. I think that had something to do with the passage. I do not approve of the method and I think it was the only time in twenty years that it was done.

Mr. Austin — Mr. Chairman, I am glad that the gentleman referred to that fact, that it had been approved before, because when I touched upon this matter before, I related how it had been approved; the first time it was passed it was introduced in the Senate the day before adjournment, and it was passed with very slight argument.

Mr. Wagner — I think the gentleman may be a little bit in error as to that.

Mr. Austin — No, I had the record from the Legislative Index on that.

Mr. A. E. Smith — Mr. Chairman, on page 1 of the bill, lines 7, 8 and 9, it provides for the passage of the amendments in both Houses of the Legislature after they sit in joint session for discussion thereon. Now I regard that as about as evil a thing as you could put into this Proposed Amendment, and I will give you good reasons for it. It would absolutely throttle the minority,— and I think everybody will agree that the people rule negatively just as well as affirmatively and that a good healthy minority is at times the people's own check on the power of the majority. Under our Assembly rules at the present time, an amendment to the Constitution is treated exactly as a bill. It is dropped in the box, printed and put on the calendars of the members. It is referred to the Judiciary Committee. The member who introduces it, whether he belongs to the majority or the minority, has the right to appear before the Committee, make the necessary explanation and request that his bill be reported from the committee. It is handed up in the same way any bill would be handed up; it goes to the calendar of second reading, and it is advanced from second reading to third reading, is read the third time and has its final passage, so that all the procedure attaching to it is identical to the procedure attaching to the passage of a proposed amendment to the statutory law. Now by this you would provide that it could only be considered in both houses after it had been discussed in joint session and on desks of the members for five days.

Mr. Hinman — Do you find any language preventing the consideration of it prior to the joint discussion? I find the language is that it shall not be finally voted on until after there has been a joint session. There is nothing here that would necessarily lead to the conclusion that neither House could consider it. What was intended by the committee was, that at least once it should be discussed in joint session before finally being voted on.

Mr. A. E. Smith — How would a joint session be brought about?

Mr. Hinman — The joint session will be brought about by concurring resolution for a joint session at a certain time for consideration of a certain amendment to the Constitution.

Mr. A. E. Smith — Suppose, then, Mr. Chairman, we will say the Democrats — I am so used to being in the minority, I say the Democrats — but suppose the minority member offers a resolution for a joint session for the discussion of his own amendment: His own House may adopt it, but when it goes over to the Senate, the Senate leader or the Chairman of the Committee on Finance may say, "Ah, ha! That's the fellow who voted against my bill last week. We will refer that to the Committee on Finance." And the

resolution for a joint session goes to the Committee on Finance, and if the Committee refuses to report it, where does that little minority member get off with his bill?

Mr. Hinman — The answer is that if the House should be divided it cannot be passed by both Houses and is unavailing, even under the present method, and of what avail is it that an amendment would be passed in one House, even though it is considered in both Houses?

Mr. A. E. Smith — I don't assume a divided House, I assume that the party is in control of both Houses and that the minority member may have enough influence in his own House to get it through his own House. But what happens to it if he does not get it through the Senate?

Mr. Hinman — The same thing that happens now when he tried to get his bill out of committee, if he is in the minority he cannot even get his proposed amendment out of committee if it is not desirable that it should be passed.

Mr. A. E. Smith — I submit to the members that the gentleman from Albany knows that that is not the fact. You know there is a great difference in voting on a technical motion here and in the Senate and on the technical proposition, you remember that in 1910 you could not get a minority in both houses to vote against the direct primary bill, but it was very easy to get the majority to agree with an adverse report of the Committee, as though it made any difference that they were in a better position when they got back home to say to the man at the general store at the cross-roads, "We didn't get a chance to vote on it; the Assembly sustained the Committee." Now, the merits would not be under discussion in the Senate, the only question would be, shall we go into joint session pursuant to resolution and we wouldn't get it through —

The Chairman — The time has expired. There are four minutes more before the floor is to be yielded to the introducer under the rule. I do not know whether anyone else wants to speak.

Mr. A. E. Smith — Will the introducer give me two minutes in which to finish. I claim that that is against the minority and it ought not to go into the Constitution. It may be possible that you could never get the rules to do it. There is nothing in here that makes it binding upon the Legislature to adopt a rule by which they shall be brought into joint session, and if it is dependent upon the rule we will never get it through.

Mr. Wagner — Do you think in joint session of the two Houses you can have as thorough a deliberation as you can have in each House separately?

Mr. A. E. Smith — No, I will say to the gentleman, for a good

reason, every Senator, with some honorable exceptions, that I have met thinks he is better than three Assemblymen, or at least as good. It is bad enough when they come in to vote together, but I would not allow them to get in together in this way, it would not be healthy for the Legislature or the State. As to the number of votes to be cast to pass an amendment, I think we are going out of our way to penalize the minority that take an interest in the affairs of the State. Take the adoption of the amendment for the judges in Brooklyn: What does the man in St. Lawrence county, or in Buffalo, or the man in the Southern tier care about there being one more judge in the county of Kings. It does not cost him a cent. He does not know about the conditions. Yet if this was in the Constitution, Kings could never get the judges. Only six hundred and forty-five thousand out of a million and a half votes cast were sufficiently interested to express themselves one way or the other. It would be just as fruitless to say you cannot pass a bill in this House until you had one hundred and forty-six members present when seventy-six votes only are necessary. When a man does not express enough interest, disregard him and take the majority of men who are sufficiently interested to study it, discuss it and cast their ballot.

Mr. Marshall — Mr. Chairman, this measure covers a large number of subjects, some of which have not been touched upon and there is such an embarrassment of riches, that I do not know where to begin, but I will begin where Mr. Smith left off. It seems to me that the proposal of the Committee with regard to a joint session is a very wholesome one. It does not mean that it shall be voted upon in the joint session, but that an amendment to the Constitution shall be regarded as a matter of importance and solemnity and not as tame a thing as the passage of a bill, but that it shall be upon a different basis. The fact that the members of the Assembly and the Senate come together to consider the subject, and that they have opportunity to discuss it, even though it may be a short discussion, puts the eyes of the people of the State upon that subject and they would consider it more than they do now. To-day, when an amendment to the Constitution is proposed in the Legislature, very few people know about it; no attention is given to it; the newspapers rarely refer to it; whereas if you have an assemblage of the two Houses, that will immediately direct attention, it will be noticed and then public opinion will begin to express itself and each House will have to deal with the subject eventually after this coming together, and what I consider even a more valuable provision is that the amendment shall be on the desks of the members at least five days before it is voted upon. I do not think Mr. Smith would object to that. That

is certainly a most valuable provision. I have had occasion to pass upon these matters when they have been under discussion in the Bar Association, for a number of years, and I have noticed how little attention we give to amendments to the Constitution. They are considered as matters of course, to be given little attention the first time, but more attention the next time and the second time they receive less consideration than the first time. These amendments should not be adopted at a special election; they should be adopted at a general election in the same way it is provided that an election to determine whether there shall be a constitutional convention shall be a general election and not a special election. At a special election you can get out very few of the voters. Public interest is very rarely manifested and I can conceive of the fact that an election on the subject of whether a constitutional convention shall be held or whether a constitutional amendment shall be adopted might be held at such a time of the year that voters could scarcely find their way into the polls and a measure of that sort might be adopted by a very small vote. We have had an example of that. Now in 1914 a special election was held in this State for the determination of the question as to whether there should be a constitutional convention. There are 1,500,000 voters in the State. That election was held in April, early in April, when in the country the roads were so heavy that the people could not get to the polls. Very little interest was manifested in the subject. People did not know much about it. There was very little discussion of the subject. At that time out of a million and a half voters only 305,000 expressed themselves upon the subject, and 151,000 voters — a little over 151,000 — expressed themselves in favor of it and the corrected returns of the election were 318 according to one claim, and 431 according to the contention of the other side, was the plurality which was cast in favor of holding of a constitutional convention. Now that election cost the State of New York about one million dollars. There was no necessity for holding it at that time. It could just as well have been held in the fall, when there would have been a larger expression of opinion, and in the same way, every special election on the adoption of a constitutional amendment or upon the revision of the constitution would cost the State one million dollars. This provision, therefore, requiring these elections to be general and not special elections is in the interest of economy as well as in the interest of a fair expression of judgment.

Now once more, harking back to that election of 1914, I want to call attention to one important fact disclosed at that time. I am not making charges against any political party. I am not discussing it from a partisan standpoint but from the standpoint

of the welfare of the State. But what did we find at that election as the result of sworn evidence, admitted evidence, not contradicted and found by Judge Seabury as the fact? We find that at that election there were cast in three districts of the State what were evidently fraudulent votes. The ballot boxes were stuffed so that in one Assembly district there were cast 2,400 votes, which were claimed to be fraudulent, practically admitted to be fraudulent. I think some twenty election officers were indicted and convicted on charges of crime which they admitted to have perpetrated in that election. In three districts they just put in ballots or made returns without ballots. In one district for instance three hundred votes were claimed to have been cast in favor of the holding of a convention and none against it. In another district, around one hundred and fifty votes were cast favoring and none against it; and so on. Now it was conceded that there were upwards of 1,700 of those votes which should have been thrown out. If those votes had been deducted there would have been a majority of some seven hundred against the holding of this convention; but at the last moment it was discovered that an error had been made in one of the districts in Kings county where in footing, there were indicated to have been passed one thousand more votes against the convention than were really cast against it, so by rectifying the returns and making allowance for that one thousand votes discovered at the last moment, there were in fact a majority of three hundred and eighteen votes cast in favor of the holding of a convention. Now, that brought out this fact which is most extraordinary, that under the law of the State as it stands to-day there might be a tampering with the ballot boxes. There might be false returns made with respect to an election. There might be fraudulent votes cast by the thousand so that an amendment to the Constitution might be counted out or counted in, so that the Constitution which we may adopt in this Convention might be declared lost by means of fraud, or declared carried by means of fraud, without the slightest possibility of remedying that situation. And so it is conceivable that if the law remains as it is, designing men might at some time deprive us of the most cherished safeguards of the constitutional law, they might deprive us of religious liberty, the freedom of the press — those great rights which are denominated the bill of rights, might be taken away by means of fraud in an election without the slightest possibility of remedying that situation. And then what would confront the State? There would be nothing to rectify the situation if relief is not granted in this Constitution but revolution, because in such a case people would be tempted to assert their rights by means of force and to prevent the taking of them away by means of fraud, and for that

reason we have proposed in this bill before us, section 3, a clause which will deal with such a situation. And I should say in addition that it has also been decided under the present situation that if the election were an illegal election, held without complying with the conditions of the Constitution, if we were in this Convention to act in disregard of the provisions of the Constitution, in the Constitution submitted to the people, there would be no remedy against that situation. The minority here might declare that what they voted for was the Constitution and there would be no possible remedy against their action if the people should decide in favor of that action. Now, we therefore have provided in section 3, which reads as follows, as amended: "The validity of an election upon any amendment or upon the question, 'Shall there be a Convention to revise the Constitution and amend the same?', and the determination whether the proposed amendment or question has received the number of votes requisite for the adoption of such amendment or the decision of such question, may be contested in the Supreme Court by any elector in an action in equity brought within three months after such election against the Secretary of State, and the judgment rendered shall be reviewable by the Court of Appeals."

Now, that rule is necessary for our protection. In a case upon which decision was rendered by the Court of Appeals, 212 N. Y., it was decided that however serious the situation was, there was no remedy. That under our present law it is only when money is involved or the title to office is involved, or some concrete right of a citizen is involved which spells property or personal liberty that there can be any relief in the court. You can contest your right to the office of Dog Catcher, but you cannot under the law as it to-day stands have it determined whether an election with regard to the holding of a Constitutional Convention or the adoption of a Constitution is valid. It cannot be reviewed under these conditions. Now, such a situation cries for immediate relief and this method which is proposed is simple and efficacious. It not only applies to these subjects, but to a referendum to the people on the question of incurring debts. As the law of to-day stands, if the State should vote, should decide by means of a fraudulent election, that there should be an issue of $100,000,000 bonds, there would be no possible relief from that situation unless this amendment were adopted. I therefore suppose that there can be no possible objection to the adoption of this section 3. Then there is another amendment I will refer to and that is the one contained in section 4 with regard to the suffrage amendment which is to be passed upon at the coming election. Both political parties — all the political parties in their platform agreed that the question of

suffrage should be submitted to the people in order to give them an opportunity to determine whether woman suffrage should be granted or not. The Legislature has by pursuing the present method of amendment recommended for action by the people at the coming election such an amendment. Under the present condition, however, it is provided that any amendment proposed by the Constitutional Convention relating to the same subject as the amendment proposed by the Legislature, coincidentally submitted to the people for approval, shall be deemed to supersede the amendment proposed by the Legislature. We are at this coming election to submit an entire Constitution which does not contain a suffrage clause. The consequence would be that unless we save that situation, the action of the Legislature would go for naught.

Now, we owe it as men and as good citizens to the people who are interested in that amendment, by reason of the declarations contained in the political platforms to submit this question to the vote of the people and, if the people decide upon it in the affirmative, to give it effect; and there can be, it seems to me, no reason why effect should not be given to such action. Personally, I am opposed to the granting of suffrage to women. I believe that it would be contrary to the best interests of the State, but notwithstanding that fact, I would consider myself as derelict in duty as a man if I did not vote in favor of having that proposition passed upon fairly and squarely at the coming election, so if the people shall determine that they desire to extend suffrage to women they should have it, and they should not be deprived of that right by reason of the provision contained in the Constitution which would nullify the action of the Legislature. That then leaves for discussion simply the question which has been most seriously discussed on the floor, namely; as to whether or not there should be a change, any change made with regard to the percentage of voters who should express themselves at the elections with regard to a proposed amendment to the Constitution, or on the subject of the holding of a constitutional convention. Now, it is certain that it does not reflect well upon a people if their fundamental law is amended by a very small minority of the people. It is most humiliating to feel that on the important question as to whether or not there should be a Constitutional Convention, there were less than 19 per cent of the votes of the electors cast, and that less than 10 per cent of the electors decided in favor of holding of such a convention, and that the majority in favor of it was less than one-fiftieth per cent of the electors. Now what has happened will happen again. If we allow this condition to continue, the people will continue to be apathetic. It is not a hardship upon those who desire to change the organic law to have the burden placed upon them of establishing reason for the change, and

to require that they should see to it that a substantial vote shall be called forth. The average man really feels, when he is not voting on the question of an amendment to the Constitution, that he is willing to let well enough alone. "What is the matter with the Constitution anyway?" is the question we hear all the time. "I am satisfied with the Constitution." "What is the use of making any change?" And many people translate their failure to vote as really a negative vote, which it is not. But those who desire the change should see to it that a substantial vote is cast, and the suggestion which has been made by Mr. Nicoll is, in my judgment, the wisest one that could be made upon that subject. When I proposed my amendment I did not ask for a two-thirds vote. My suggestion was, tentatively, three-fifths. The Committee thought that a larger vote should be required. I am entirely satisfied and I think the people would be entirely satisfied if you should say at least one-half of the people of the State who vote at the election at which these subjects are submitted shall vote upon the subject, and that a majority of that one-half shall determine whether or not the Constitution shall be amended.

Mr. A. E. Smith — On what vote would you base that; on the vote for assemblyman?

Mr. Marshall — On the aggregate vote for assemblyman.

Mr. A. E. Smith — I had this in mind, that under the present form of ballot there are a great many less votes cast for members of Assembly than there is for the rest of the ticket.

Mr. Marshall — Yes, and for that reason that was selected, because we did not want to have the top-notch vote. We wanted to have what might be considered a fair vote and that, therefore, indicates that there is no extravagant requirement. It is a reasonable requirement and that was purposely done as suggested in my amendment for the reason that I thought we did not wish to allow anybody to say that we are trying to put unnecessary burdens upon those who desire to amend the Constitution; and then, of course, there is the further reason why, that we vote for Assemblymen every year. That is another reason. Mr. Choate expressed himself precisely on the same line of the suggested amendment by Mr. Nicoll. Now is it anything unreasonable to say that if there are one million five hundred thousand electors in this State and it is attempted to amend the Constitution, that seven hundred and fifty thousand of those electors shall express themselves on the subject, and that the votes of three hundred and seventy-five thousand electors are required to amend the Constitution? Is not that a minimum requirement, when you require one-half of the electors, which would be seven hundred and fifty thousand, to say that you shall have the affirmative action of three hundred and seventy-five thousand of the electors? Do you want to repeat the

experience of April, 1914, and say that a hundred and fifty-one thousand out of a million five hundred thousand people shall lay the foundation of changing the organic law of the State? I have heard it said that the two-thirds amendment would prevent the changing of the Constitution. I do not think that would be the case, but let us take the one-half rule which I understand Mr. Hinman and the Committee on Future Amendments are ready to adopt, and you will find that there can be no difficulty at all in having one-half of the electors vote. I find that in 1866, 50 years ago, when our population was not more than one-half of what it is to-day, on the proposition of holding a Constitutional Convention, 609,000 votes were cast. In 1869, there were cast for and against the amended Constitution proposed, 514,000. In 1886, on the question as to whether there should be the holding of a Constitutional Convention, there were cast 605,000 votes. In 1894, there were cast for our revised Constitution, 737,000. On the legislative apportionment, 754,000. On the Canal Improvement Amendment, 760,000. In 1896, on the Forest Preserve Amendment, there were cast 1,031,000; and on the Workmen's Compensation Law, there were recently cast over 700,000, which was more than 50 per cent. of the votes which were cast at that election. All that this rule now asks for is to simply provide or to make a reasonable requirement that the people should know that, if their Constitution is to be amended, there must be a substantial, a reasonably substantial vote of one-half and that one-fourth voting in the affirmative should be required to amend, or to hold a Convention. That is a simple requirement. In the Legislature seventy-six votes are required before you can pass an ordinary statute. In the Constitutional Convention here, eighty-five votes are required before a matter can be submitted to the people. Here we only ask that 25 per cent. of the people shall express themselves upon that proposition. What is there in such a suggestion which can offend anybody? Why is it not in the interests of the minority itself, which requires protection, in the interest of every citizen in this State, that this fundamental, this organic law should not be lightly dealt with; that it should not be rejected, or superseded without at least some affirmative action by a reasonable proportion of the people, reversing the general rule which applied to the election of officers as to whom a majority vote is required.

The Chairman — The time for the vote has arrived.

Mr. Marshall — I want to make a further statement, and that is to refer to the very able book of Professor Dodd entitled: "The Revision and Amendment of State Constitutions". He collates the votes taken in various States on Constitutional Amendments. It is remarkable to note the contrast which he discloses between the

vote cast on Constitutional Amendments in most of the States of the Union with that which has heretofore prevailed in this State. He shows that if the people desire to do so and are satisfied that an amendment is desirable, they can come out and vote. Thus in Ohio ninety per cent. of the electors have repeatedly voted proposed constitutional provisions. A similar percentage of voters are shown to have acted on various amendments proposed to the people of Minnesota, Michigan, Oregon and other populous States of the Union.

Mr. D. Nicoll — I offer an amendment in order to make the other provisions of the Proposed Amendment conform to the amendment of mine already offered.

The Chairman — Is this a substitute for your other amendment?

Mr. D. Nicoll — No; it simply makes the other provisions conform.

The Chairman — The Clerk will read Mr. Nicoll's amendment.

Mr. D. Nicoll — This is an amendment of Section 2. My former amendment was Section 1.

The Secretary — By Mr. D. Nicoll: On page 3, line 5, strike out the word "two" and insert the word "one". On page 3, line 6, strike out "thirds" and insert "half". On lines 7, 8 and 9, strike out the words "or provided the majority vote in favor of such amendment shall equal at least one-half of the aggregate number of votes cast for members of the Assembly at such election".

Mr. Wickersham — Mr. Chairman, I offer the following amendment.

The Secretary — By Mr. Wickersham: Amend at the end of page 5, by adding a new section to be numbered Section 5, and which shall be submitted separately to the people at the same time as the proposed new Constitution, which section shall read as follows: "The question 'Shall there be a convention to revise the Constitution and amend the same?' shall not be submitted before the year one thousand nine hundred and thirty-six, unless the Legislature shall by law otherwise provide, anything in the Constitution to the contrary notwithstanding."

Mr. Wickersham — The word "electors" ought to be in there.

Mr. Hinman — I desire to offer two amendments which are simply as to matters of verbiage.

The Secretary — By Mr. Hinman. On page 4, line 6, strike out the letter "s" from the word "qualifications". Page 4, line 14, strike out the word "the" after the word "to", and insert in place thereof "a". Page 4, line 20, print the letter "s" in the word "amendments" in italics.

By Mr. Hinman. Page 3, line 8, strike out the word "amendment" and insert the word "question". Page 5, line 15, strike out the word "now" and insert in place thereof the word "then".

Mr. Hinman — Mr. Chairman, inasmuch as these amendments have come to me from the Chairman of the Committee on Revision, and are merely as to matters of verbiage, I ask unanimous consent that these amendments be passed on before considering the other amendments.

The Chairman — Is there objection to the request made by Mr. Hinman?

Mr. Doughty — Mr. Chairman, that might also apply to the amendments I offered on the same subject on page 5.

Mr. Hinman — I have no objection.

The Chairman —As to the suggestion of Mr. Hinman and Mr. Doughty, that the amendments just read, as the amendments offered by Mr. Hinman and Mr. Doughty were suggested by the Chairman of the Committee on Revision, I understand that Mr. Hinman moves those amendments be first voted upon, if there is no objection. Is there any objection? The Chair hears none. All those in favor of the amendments offered by Mr. Hinman will say Aye. Opposed, No. Carried. All those in favor of the amendment offered by Mr. Doughty will say Aye. Opposed, No. Carried.

Mr. Schurman — Mr. Chairman, may I present an amendment?

The Secretary — By Mr. Schurman. Page 2, strike out the words in italics in lines 15, 16 and 17, and in line 18 up to the word "provided", and in line 19 strike out the word "half" and insert "quarter".

The Chairman — The question first occurs upon the amendment first offered by Mr. Hinman, which the Clerk will read again.

The Secretary — By Mr. Hinman. On page 5, line 11, insert a bracket before the period following the word "legislature".

The Chairman — You have heard the amendment. All those in favor will say Aye. Those opposed, No. Carried. The next question occurs upon the amendment by Judge Dunmore. The Clerk will read it.

The Secretary — By Mr. Dunmore. On page 1, line 6, after the word "majority" insert "of two-thirds". On page 2, line 3, strike out all of line after the word "thereon"; also all of lines 4, 5, 6, 7, 8, 9, and all of line 10 except the word "submit", and insert in place thereof "the legislature shall". On page 2, line 12, after the word "the" insert "next".

The Chairman — You have heard the amendment. All those in favor will signify by saying Aye, opposed No. The amendment is lost. The next amendment is that offered by Mr. Cobb. The Clerk will read the amendment.

Mr. Cobb — Mr. Chairman, since that amendment was offered,

I have accepted a suggestion of the Chairman of the Committee on Revision and Engrossment, which slightly changes the form, but not the substance of the amendment. This amendment is intended to obviate the objection which has just been disclosed by the last amendment of General Wickersham, that we have to submit as a separate proposition the question, "Shall there be a vote next year on the question of a convention?" Now the amendment fixes an arbitrary year, 1935. My proposed amendment fixes a movable date that makes it mandatory only after the expiration of twenty years since the question was submitted.

Mr. Wickersham — It seems to me that is in line with the amendment I have offered regarding next year.

The Chairman — Is there objection to Mr. Cobb's present amendment being substituted and being voted upon now in the order in which his original amendment should? The Chair hears no objection. The clerk will read the amendment of Mr. Cobb.

The Secretary — By Mr. Cobb. Page 2, strike out lines 24, 25 and 26. Page 3, strike out lines 1 to 9, inclusive, and insert in place thereof: "The question 'Shall there be a convention to revise the constitution and amend the same?' shall be submitted to the electors of the State at each general election next ensuing the lapse of twenty successive years since the last previous submission thereof, and shall be submitted at such other times as the Legislature may by law provide, in case a majority of the electors voting thereon" ?

Mr. J. G. Saxe — Mr. Chairman, I wish to make a point of order that may be helpful to us. That is, under the rule we must proceed section by section and take up the amendments in order as they relate to sections and not to the whole bill. Now, this is to amend section 2, and the next amendment may jump to 4; and there are several amendments to section 1.

The Chairman — The Chair suggests that as the clerk has not these amendments arranged section by section, it would take more time to so arrange them than it will to proceed as we are.

Mr. J. G. Saxe — The point of order I would make is to take up section 1, and dispose of section 1.

Mr. Wickersham — There is no requirement that the amendments should be section by section. It is in the order of their proposal.

Mr. J. G. Saxe — You have to take the bill up section by section. I am not particular on the point of order, but I suggest it so that we will know what we are doing.

The Chairman — The next amendment is that of Mr. Cobb.

Mr. Sharpe — Isn't the last amendment of Mr. Cobb's just read to be voted on?

The Chairman — You are right.

Mr. Sharpe — Then I should like to amend that by adding the words "general election" — "at such general election".

The Chairman — Do I understand the mover to accept that?

Mr. Cobb — His suggestion simply is that the words "at such general election" be substituted for "at such other times", as the amendment stands. I am willing to accept that, if desired.

The Chairman — The Clerk will substitute the words "general election" in the amendment.

Mr. Wickersham — It is in the copy which I have. No objection.

The Chairman — The question is on the amendment of Mr. Cobb.

Mr. F. L. Young — I think some of us would like to know what the effect of the Cobb amendment is in its relation to the Wickersham amendment.

Mr. Cobb — Mr. Chairman, while I am on my feet I can explain that.

Mr. F. L. Young — I understand that, but is there any conflict between your amendment and that of Mr. Wickersham?

Mr. Cobb — None whatever.

Mr. Wickersham — Yes, I think Mr. Cobb's amendment, as it is phrased, would embrace a portion of the excision which I have proposed on page 3, and I suggest that action on it be deferred until after the vote shall have been taken on my motion to strike out these two italicized paragraphs, because, otherwise part of it would be included in my amendment.

Mr. Cobb — It strikes out all of the italicized matter on page 3. I do not think it conflicts.

The Chairman — Does Mr. Cobb withdraw his amendment temporarily?

Mr. Cobb — I think it is unnecessary. Your amendment strikes out the same thing.

Mr. Wickersham — I will not insist. I want the House to understand just the effect of it.

Mr. Hinman — As chairman of the Committee, I desire to say that the Committee is perfectly satisfied with that portion of Mr. Cobb's amendment which relates to submitting the question automatically every 20 years. But there is a division with reference to the balance of the proposal, dealing with the precise amendment offered by Mr. Wickersham. I think it would be helpful if we could consider them separately, and I therefore ask for a division in that regard.

The Chairman — A division of the question is asked. Will you indicate, Mr. Hinman, just what division you propose?

Mr. Hinman — He provides in his amendment, "a majority voting thereon", and the Committee on Future Amendments is opposed to that. I should like to have that tested out by itself. I think it is fair that it should be, and I therefore ask for a division of the amendment, with reference to Mr. Cobb's proposal, so that we may take up separately the two questions.

Mr. Wickersham —If Mr. Cobb will ask that action be reserved on his amendment until mine has been voted on, I think it will clarify the situation.

The Chairman — Does Mr. Cobb consent to that?

Mr. Cobb — I ask that that be done.

Mr. Ostrander — Mr. Chairman, is there any possibility of having these amendments printed and laid on the desks so that the wayfaring man can tell what he is voting on?

The Chairman — I suppose that could be done by order of the Convention. The Committee cannot order it.

Mr. Ostrander — I am at a loss how to vote with all these overlapping amendments.

Mr. Wickersham — I think we can follow them well enough, Mr. Chairman, and time presses. I suggest that we proceed to vote.

The Chairman — The next amendment is the amendment offered by Mr. Barnes, which the clerk will read.

The Secretary — By Mr. Barnes: Page 3, line 16, insert a bracket before the word "April" and after the word "election" and insert in the same line, following the bracket after the word "election", the following in italics: "December next ensuing after the completion of the canvass of the votes cast for delegates-at-large at such election". Page 4, line 16, insert a bracket before the word "six". Page 4, line 17, insert a bracket after the word "weeks" and insert after such bracket the following in italics: "ninety days".

Mr. Hinman — Mr. Chairman, it might be helpful for the members of the Committee to know the precise effect of that proposal. It is to change the time for the sitting of the convention from the first Tuesday in April to the first Tuesday after the canvass of the vote for delegates-at-large after the election, which would be some time in the latter part of December. The balance of it is with reference to presenting it at the general election not less than ninety days after the adjournment of the Convention, instead of six weeks, as at present, so that the Convention would have a little longer period for the consideration of matters and the people would have a little longer period for the consideration of the product of the Convention.

The Chairman — You have heard the amendment offered by

Mr. Barnes. Are you ready for the question? All those in favor will say Aye, opposed No. The amendments are carried. The next is the amendment offered by Mr. Parsons, which the Clerk will read.

Mr. Parsons — Mr. Chairman, my amendment is the first part of the amendment offered by Mr. Wickersham, and as the matter is presented more comprehensively in his amendment, I will withdraw mine.

The Chairman — Mr. Parsons' amendment is withdrawn. The next is the amendment offered by Mr. Marshall, which the Clerk will read.

The Secretary — By Mr. Marshall: On line 22, page 4, after the word "amendment" add the words "or proposed constitution". At the end of the same line strike out the word "upon". On line 24, page 4, after the quotation marks add "or upon any other question submitted to the electors of the state under the constitution". After the word "amendment", line 25, page 1, add the word "constitution". After the word "or", line 26, page 4, add the words "constitution or".

Mr. Marshall — Mr. Chairman, I would like to say that that merely perfects the amendment which relates to the subject of testing the validity of an election held on these subjects which are described.

The Chairman — You have heard the amendment by Mr. Marshall. All those in favor will say Aye, opposed No. It is carried. The next is the amendment offered by Mr. Wickersham. The Clerk will read.

Mr. Hinman — May I say for the benefit of the members of the Committee that I have asked the members of the Committee on Future Amendments what their present disposition is with respect to the question of the *quantum* of the vote and they are all agreeable to the change which has been suggested by Mr. Nicoll, that we require a majority of the majority, which would mean not to exceed twenty-five per cent. of the votes cast for members of Assembly.

Mr. Wickersham — Mr. Chairman, it does not seem to me that that accomplishes any useful purpose. I am sorry I cannot agree with Mr. Nicoll or the Chairman on that.

The Chairman — The question is upon the amendment offered by Mr. Wickersham.

The Secretary — By Mr. Wickersham, page 2, lines 15 to 21, strike out the matter in italics. On page 3, lines 4 to 9, strike out the matter in italics.

Mr. Wickersham — That is my amendment.

The Chairman — You have heard the amendment read. Are you ready for the question?

Mr. D. Nicoll — Division.

The Chairman — A division is asked for. All those in favor of the amendment offered by Mr. Wickersham will rise and remain standing until counted. The delegates will be seated. Those opposed will rise. The gentlemen may be seated. The Clerk will announce the result.

The Secretary —Ayes, 73; Noes, 50.

The Chairman — The amendment is adopted.

Mr. Foley — I offer the following amendment to Mr. Wickersham's amendment.

The Chairman — Senator Foley, may that amendment await its order, there being several other amendments submitted?

Mr. Foley — Yes, I understand it is to take its regular order. It is an amendment to Mr. Wickersham's amendment which has just been adopted.

Mr. Cobb — Mr. Wickersham's amendment having been disposed of, which replaced mine, I trust the vote will be taken on the amendment which I offered.

Mr. Wickersham — I move that that be done, because at my suggestion, Mr. Cobb withdrew from the order to which he was entitled.

The Chairman — If there is no objection, the Clerk will again read the amendment offered by Mr. Cobb.

The Secretary — By Mr. Cobb. Page 2, strike out lines 24, 25, and 26. Page 3, strike out lines 1 to 9, inclusive, and insert in place thereof: "The question, 'Shall there be a convention to revise the Constitution and amend the same?', shall be submitted to the electors of the State at each general election ensuing the lapse of twenty successive years since the last previous submission thereof and shall be submitted at such other general elections as the Legislature may by law provide, in case a majority of the electors voting thereon."

Mr. Hinman — In view of the action just taken by the Committee of the Whole, I think I may safely state that the Committee on Future Amendments would have no objection to the proposal offered by Mr. Cobb.

The Chairman — You have heard the question. All those in favor of the amendment offered by Mr. Cobb will say Aye, opposed No. It seems to be carried and is carried.

The next is the amendment offered by Mr. J. G. Saxe.

Mr. J. G. Saxe — Mr. Chairman, that amendment merely makes the same provision for the present Constitution to be submitted this fall as is made with respect to future amendments, and, in view of the fact that the barrier has been removed by the passage of Mr. Wickersham's amendment, I will withdraw my amendment.

The Chairman — The amendment of Mr. J. G. Saxe is withdrawn. The next is the amendment offered by Mr. Austin. The Clerk will read.

The Secretary — By Mr. Austin. Page 5, line 18, strike out all after the period.

Mr. Austin — I will say, Mr. Chairman, that I have no desire to press that unless the chairman of the committee and the introducer, Mr. Marshall, are satisfied. I think it has already been taken care of in the Finance Amendment.

Mr. Marshall — I so believe. I think that the Finance Amendment which has passed third reading covers the whole subject in a very few words, and it is unnecessary to pass this amendment.

Mr. Austin — I have no desire to press it unless Mr. Marshall and Mr. Hinman are satisfied it is all right.

Mr. Marshall — I think it is merely a repetition.

Mr. Hinman — What has appealed to the Committee, and I think appeals to Mr. Clinton, who is very much interested in the subject of canal referendum, is that bond buyers are very careful people; that there is nothing specifically in the finance amendment which refers to this canal referendum. It does speak of matters presented prior to a certain date.

Mr. Austin — If the Chairman thinks this should not go in I do not want to press the amendment and I therefore withdraw it.

Mr. Hinman — I was going to suggest that there is still going to be a further review of the entire Constitution when the Committee on Revision brings in its report and I think it will be possible to clear up any difficulty in that way.

Mr. Austin — I withdraw it.

The Chairman — The amendment offered by Mr. Austin is withdrawn. The next is the amendment offered by Mr. A. E. Smith.

Mr. A. E. Smith — Mr. Chairman, I understand my amendment has been accepted by the Committee. It simply strikes out the brackets around the words " or amendments."

Mr. Hinman — The Committee thought those were unnecessary words, but we have no objection to their being retained.

The Chairman — The Clerk will read the amendment.

The Secretary — By Mr. A. E. Smith: Page 1, line 4, strike out the brackets. Page 2, strike out the brackets in lines 2, 7, 11, 14 and 21.

The Chairman — You have heard the amendment read. All those in favor of the amendment will say Aye, opposed No. The Chair asks for another vote. All those in favor of the amendment will say Aye, opposed No. Carried. The next are the amendments offered by Mr. Donnelly. The Clerk will read.

The Secretary — By Mr. Donnelly: On page 2, lines 12 and 13, strike out the brackets and italics. Page 2, line 26, strike out the brackets and italics. Page 4, line 15, strike out the brackets. Page 4, line 16, strike out the italics and brackets.

Mr. Donnelly — I merely want to say that this provides for the submission of a constitutional amendment at a special as well as at a general election.

Mr. Hinman — For the reasons stated by Mr. Marshall, I believe it would be very objectionable to pass with approval upon this amendment. I trust it will be defeated.

Mr. Wickersham — I entirely agree with the views of the Chairman of the Committee.

Mr. J. G. Saxe — Mr. Chairman, the second portion of this amendment has been amended by the Cobb amendment, and I think that ought to be withdrawn from the proposed amendment.

The Chairman — All those in favor of the amendments by Mr. Donnelly will say Aye, opposed No. The amendments are lost. The question next occurs upon the amendment offered by Mr. D. Nicoll.

Mr. D. Nicoll — That has been absorbed in the Wickersham amendment.

Mr. Wickersham — Its ancestor having been adopted, I think it falls by the wayside.

The Chairman — The amendment offered by Mr. D. Nicoll is withdrawn. The question now occurs upon the amendment offered by Mr. J. L. O'Brian. The Clerk will read.

The Secretary — On page 1, lines 7 and 8, strike out the italicized words, " after sitting in joint session for the discussion thereof and ".

Mr. J. L. O'Brian — I ask for a division, Mr. Chairman.

The Chairman — A division is called for.

Mr. Hinman — I sincerely trust that this amendment will not be adopted. I think as it stands it will be most helpful in focusing the attention of the Legislature upon what is a more solemn function than the passage of a general law. I believe, for all the reasons that have been stated by Mr. Austin, Mr. Marshall and myself in connection with it, that it would be very helpful in that respect and I think it should not be considered as in any way embarrasing the passage of Constitutional amendments.

Mr. J. L. O'Brian — Mr. Chairman, in view of the statement just made, I certainly hope that this will be adopted. It provides in an indirect way a more serious restriction on the passage of Constitutional amendments than does the whole subject of two-thirds of one-half or one-half of two-thirds, because it necessitates —

Mr. Barnes — Point of order.

Mr. J. L. O'Brian — I should not have spoken except for the remarks made by Mr. Hinman. There is no such thing to-day in legislative practice as joint sessions for legislative purposes.

The Chairman — A division is asked for upon the amendment offered by Mr. J. L. O'Brian. All those in favor will rise and remain standing until counted. Those opposed will rise. The Clerk will announce the result.

The Secretary — Ayes 47; Noes 70.

The Chairman — The amendment is lost. The question now occurs upon the second amendment offered by Mr. D. Nicoll.

Mr. D. Nicoll — That shares the same fate.

The Chairman — That is withdrawn?

Mr. D. Nicoll — Withdrawn.

The Chairman — The question now occurs upon the amendment offered by Mr. Wickersham. The Clerk will read.

The Secretary — Amend by adding at the end of page 5, a new section, to be numbered section 5, and which shall be submitted separately to the people at the same time as the proposed new Constitution, which section shall read as follows: Section 5, the question, "Shall there be a Convention to revise the Constitution and amend the same?", shall not be submitted to the electors before the year one thousand and nine hundred and thirty-six unless the Legislature shall by law otherwise provide, anything in the Constitution to the contrary notwithstanding.

Mr. Wickersham — Mr. Chairman, that is simply designed to provide against the possible case of the constitution which we may adopt failing of ratification by the people, in order to prevent the requirement of having an election to determine whether there shall be a Convention to revise the Constitution held next year, whether the people want it or not.

Mr. Quigg — What are we voting on, the preamble or the resolution? The preamble says something about when it will be submitted. Are we voting on that?

Mr. Wickersham — It is all put in the section there.

The Chairman — Are you ready for the question?

Mr. Marshall — It ought to be 1935; 1936 will be a Presidential year.

Mr. Wickersham — I accept the amendment. It should be made to read 1935.

The Chairman — If there is no objection, the Clerk will change it to 1935.

Mr. Griffin — A question of information, which I hope General Wickersham will be able to answer; what is the reason for the concluding clause in his Proposed Amendment, "anything in this

Constitution to the contrary notwithstanding." I confess I do not like that language.

Mr. Wickersham — The reason for it is to be found in the provisions of section 2 of Article XIV of the existing Constitution, which reads as follows: "At the general election to be held in the year one thousand nine hundred and sixteen and every twentieth year thereafter, and also at such times as the Legislature may by law provide, the question, 'Shall there be a convention to revise the constitution and amend the same?', shall be decided by the electors of the state."

Mr. Griffin — Does the language "anything in this constitution to the contrary notwithstanding," refer to the present constitution, or the constitution which —

Mr. Wickersham — It is not "in this constitution." The language is "in the constitution" which would be the one in force.

The Chairman — The question occurs upon the amendment offered by Mr. Wickersham, which the clerk has read. All those in favor will say Aye, opposed No. It seems to be and is carried.

Mr. Low — Mr. Chairman, I rise to ask a question. I think the Committee of the Whole adopted Mr. Barnes' amendment, which provided for the convening of the next Constitutional Convention. If I understand Mr. Hinman correctly, it will bring the Convention together towards the end of December, perhaps at Christmas time. I suppose the Convention could meet in the Capitol, as the Constitution now provides, but it could not go on with its sessions on account of the Legislature. Where is it to meet? It cannot meet here because the Legislature will need the chambers, and I think that our own experience shows that the use of the committee rooms and of the library is very important for the Convention. I wish to ask whether, in the exact form we have adopted the amendment, it is practicable?

The Chairman — The Chair cannot answer that question. The Chair recognizes Mr. Hinman.

Mr. Hinman — Mr. Chairman, I did not hear all of the question that was asked, but if I gathered it right, it is a matter of detail that can be taken care of by a subsequent amendment, perhaps on third reading, or by instructing the Committee on Revision. I think it is simply a matter of detail. The Committee has gone on record as favoring that the Convention convene at that time. I think we had better save the time of the Convention at the present time and proceed.

The Chairman — The Clerk will read the amendment offered by Mr. Schurman.

Mr. Schurman — Mr. Chairman, I had supposed that the action on Mr. Wickersham's amendment disposed of that. If, technically, it remains before the committee, I desire to withdraw it.

The Chairman — The amendment offered by Dr. Schurman is withdrawn. The question now occurs upon the amendment offered by Mr. Foley.

The Secretary — By Mr. Foley. On page 2, line 13, amend by inserting after the word "prescribe" the following in italics: "Except that the question submitted for each proposed constitutional amendment shall be printed, where printed ballots are used, upon the ballot for candidates for members of the assembly."

Mr. Foley — My idea, Mr. Chairman, is that this consolidation of the two ballots would center the attention of the voter on the question submitted. I think you will have a much larger vote in that way.

Mr. Hinman — The experience in other States has been that they have been trying to get away from the proposition of having proposed amendments submitted on the ballot on which candidates are being voted for and they have looked with some degree of favor upon the policy which has been adopted in the State of New York, to have a separate ballot for constitutional amendments. I believe that in this most important matter we would be running away from what is undoubtedly growing to be recognized as a better and a saner policy.

Mr. Wickersham — May I ask the introducer of this amendment whether it would not be possible to deal with this by law?

Mr. Foley — It could be dealt with by law.

Mr. Wickersham — Would it not be better then to leave it in that way, where it can be dealt with by the Legislature, than to attempt to deal with it here?

Mr. Foley — I accept the suggestion of Mr. Wickersham and withdraw the amendment.

The Chairman — The amendment is withdrawn.

Mr. Hinman — Mr. Chairman, I move the adoption of the proposed amendment as amended.

The Chairman — Mr. Hinman moves the adoption of the proposed amendment as amended. Are you ready for the question?

The Chairman — All those in favor will say Aye. Opposed, No. It is carried.

Mr. Wickersham — Mr. Chairman, the next amendment is very short, Mr. Marshall's, which is No. 145. I move the adoption of it.

The Chairman — The Chair recognizes Mr. Marshall upon general order No. 58.

Mr. Marshall — Mr. Chairman, this is merely a formal amendment. It provides the time when this Constitution is to go into effect, January 1, 1916.

The Chairman — Are you ready for the question? All those in favor of the amendment will say Aye. Opposed, No. It is adopted.

Mr. Wickersham — Mr. Chairman, I move the Committee do now rise and report its action to the Convention.

The Chairman — The gentleman from New York, Mr. Wickersham, moves that the Committee do now rise and report its action to the Convention. All those in favor will say Aye. Opposed, No. It is carried. The President resumes the Chair.

The President — The Convention will come to order.

Mr. Lincoln — The Committee of the Whole has had under consideration general order No. 57, relating to future amendments, has made certain amendments thereto and recommends its adoption. The Committee of the Whole has also had under consideration general order No. 58, relating to the time when the Constitution shall take effect, and recommends its adoption.

The President — The question is upon agreeing to the report of the Committee of the Whole on general order No. 57. Is the Convention ready for the question of agreeing to the report of the Committee of the Whole on general order No. 57?

The President — All in favor of agreeing to the report will say Aye. Contrary, No. The Ayes have it, and the report is agreed to and the proposed amendment is advanced to the order of third reading. The question is upon agreeing to the report of the Committee of the Whole, recommending the passage of general order No. 58. All in favor of agreeing to the report will say Aye. Contrary, No. The report is agreed to and the proposed amendment is advanced to the order of third reading.

Mr. Wickersham — Mr. President, it is now a quarter of one. The next general order on special orders is an important one and I move that the Convention do now adjourn until two o'clock, instead of two-thirty, and then proceed to the consideration of the next special order.

The President — You mean, to take a recess?

Mr. Wickersham — Take a recess.

The President — All in favor of taking a recess until two o'clock this afternoon will say Aye. Contrary, No. The motion is agreed to and the Convention stands in recess until two o'clock. Whereupon, at 12:45 p. m. the Convention took a recess until 2:00 p. m. of the same day.

AFTER RECESS—2:00 P. M.

The President — The Convention will come to order.

Mr. Rodenbeck — The Committee on Revision and Engrossment submits the following report.

The Secretary — Mr. Rodenbeck for the Committee on Revision to which was referred proposed amendment from the Committee on Legislative Organization, No. 835, introductory No. 697, to amend section 6 of article III of the Constitution in relation to the compensation and expenses of members of Legislature, also proposed Constitutional amendment introduced by Mr. Blauvelt, No. 837, Int. No. 831, to amend article VII, reports the same examined and found properly engrossed.

The President — The question is on agreeing to the report of the committee. All in favor will say Aye, contrary No. The report is agreed to.

Mr. Wickersham — I suggest the absence of a quorum and I ask that the roll be called.

The President — The Secretary will call the roll.

Upon the call of the roll the following delegates responded: Messrs. Adams, Aiken, Allen, F. C., Angell, Austin, Baldwin, Bannister, Barrett, Baumes, Bayes, Beach, Bell, Berri, Betts, Blauvelt, Bockes, Brackett, Brenner, Burkan, Byrne, Clinton, Cobb, Coles, Cullinan, Curran, Dahm, Dennis, Deyo, Dick, Donnelly, Donovan, Doughty, Dow, Dunlap, Dunmore, Dykman, Eisner, Eppig, Fancher, Fobes, Foley, Franchot, Green, Greff, Griffin, Haffen, Hale, Heaton, Johnson, Jones, Kirby, Landreth, Latson, Leary, Leggett, Lennox, Lincoln, Linde, Lindsay, Low, McKinney, Mandeville, Mann, Martin, F., Martin, L. M., Marshall, Mathewson, Meigs, Nicoll, C., Nicoll, D., Nixon, Nye, O'Brian, J. L., Ostrander, Owen, Parker, Parmenter, Parsons, Pelletreau, Phillips, S. K., Potter, Quigg, Reeves, Rhees, Rodenbeck, Rosch, Ryan, Ryder, Sanders, Sargent, Saxe, M., Schurman, Sears, Sharpe, Shipman, Slevin, Smith, A. E., Smith, E. N., Smith, R. B., Smith, T. F., Stanchfield, Standart, Steinbrink, Stimson, Stowell, Tanner, Tierney, Tuck, Unger, Van Ness, Wagner, Ward, Waterman, Weed, Westwood, White, C. J., Wickersham, Wiggins, Wood, Young, C. H., President.

The President — A quorum of the Convention is present, and the Convention will go into Committee of the Whole for the consideration of the report of the Committee on Governor and Other State Officers, General Order No. 59. Will Mr. Martin Saxe take the Chair. (Mr. Saxe takes the Chair.)

The Chairman — The Convention is in the Committee of the Whole. The Clerk will read the proposal.

The Secretary — No. 831, General Order No. 59, by the Committee on Governor and Other State Officers. Proposed Constitutional Amendment, repealing sections 1, 2, 3, 4, 6, and 7, of article V, and creating a new article V in relation to the State officers.

Mr. Tanner — I believe, Mr. Chairman, that the report of the Committee on Governor and Other State Officers is to be viewed in a slightly different light from the reports of many other committees. It represents the best judgment, not only of this committee but of many other committees with which it has cooperated; and I take this occasion to express my sense of lively appreciation of the help that has been given to our committee by other committees and their chairmen. It has been the policy of our committee, gentlemen, to incorporate into this framework which we now present for your consideration the work and the recommendations of other committees, either by reference to what has happened in the Convention, or to your files. You will find, for instance, that we have recommended the same thing, only not in as full form, but so far as is necessary to complete the framework of our bill, the recommendations of the Committee on Public Utilities, of the Committee on Conservation, of the Committee on Education, of the Committee on Banking and Insurance, of the Committee on Civil Service, of the Committee on Charities, and other committees. And while our Committee has worked, I believe, hard and conscientiously, the work which we now present to you is a composite of its deliberations and the deliberations of these eight or nine other committees. And the chairmen of these committees that I have mentioned have acted with great courtesy and fairness to our committee in withholding their recommendations until conference between the two committees, and the result is the bill which is now before you. Now, I don't, gentlemen, contend for the sacredness of the report of any committee. But I do believe that the report of seventeen men taken at large in this Convention who have sat patiently and listened to all the evidence, who have sat in executive session, and have conferred with every other committee considering the subject that was cognate to our subject, should have the careful consideration of this Convention. We have held twenty public hearings; we have examined about seventy witnesses, and either the committee or the sub-committee on drafting under its instructions have held something over thirty-seven executive sessions. Inasmuch as we were trying to make a framework of government, it seemed altogether fitting to us that we should call into conference every State officer to get the practical end of the workings of the government. We waited on the Governor in executive session; we had before us the Attorney-General, the Secretary of State, the Comptroller, Treasurer, State

Engineer, Superintendent of Public Works, Commissioner of Highways, the Chairman of the Tax Commission, Commissioner of Education, Commissioner of Excise, Counsel to the Excise Department and Commissioner of Agriculture. And it is on, very largely, the recommendation of these gentlemen that we have formed the framework of government which is the thing I shall ask your first consideration to.

After getting as many witnesses who knew just the working of the State as we could, we asked other witnesses from out of the State, men with theoretical knowledge. President William H. Taft, Senator James W. Wadsworth, Dr. Goodnow of Johns Hopkins University, President Lowell of Harvard, Dr. Cleveland, and others were the distinguished men who appeared before our Committee and gave it the benefit of their experience and advice, and after we got that far, we then gave notice to every delegate who had proposed an amendment which was submitted to our Committee for primary consideration, and gave them a hearing if they desired. And after that we gave to everyone who requested a hearing prior to the time fixed for the limitation of amendments by this Convention, an opportunity to be heard. So that I believe we laid the foundation for sane, sensible suggestions as to the change in the structure and framework of the executive branch of our government. Now, gentlemen, if you will turn to the bill, General Order No. 59, perhaps you can follow my remarks a little more clearly, for the bill is, I think, simple in form, and yet it deals with a complicated subject, as wide as the State government itself. As was remarked at the first hearing that this Committee ever had, the subject divides itself into two parts: First, shall we have a system of co-ordinated departments, grouping together the natural functions of government? That is the real question we tried to determine, without any reference at all to the question of whether they should be appointed or elected. I suggest, as that means of procedure worked well in the Committee, it might work well here in the Committee of the Whole. And let us first go at the question of separating these departments and of condensing them without any regard to the troublous question which will probably afflict us later in the session. Now, it may occur, gentlemen, to some on the floor of this Convention that we ought to leave well enough alone; that this has been a great State and that we do not suffer from the effects of this government. And so far as giving a clean bill of health to the State officers in this or any other administration, I wish to state that it is the feeling of this Committee that anything that is said on the floor in criticism of the work of departments is not a criticism of the head of the department, but it is the system under which such head has tried to

bring about good results. There is nothing personal in the criticism that we have offered, either of the officers of to-day or years gone by. I don't wish to burden your minds more than is necessary with figures and I have reduced them to the simplest form that I know of. In 1884 the number of commissions or boards or departments that constituted the executive branch — and of course this afternoon we say nothing about the judicial or the legislative — the number of boards that constituted that branch was 38. Ten years later, in 1894, the number was only 39, and then began a growth, an expansion, a growth by accretion of departments, the like of which has never been seen in this or any other State. When the Convention sat framing the Constitution twenty-one years ago there were only thirty-nine boards and departments. In 1904 it had grown to sixty, and in 1914 it had grown to 152. I believe when men who have had some experience in government, as the men sitting on the floor of this Convention have, that statement is sufficient to prove that there should be a reorganization of departments to which we have addressed ourselves. Now, I don't know that that is the sole reason, or even perhaps a main reason why our expense of State government has grown by leaps and bounds, or whether it is the reason that our tax rate has grown correspondingly. But every time you have a new board or commission you have a new overhead expense. They all want separate offices and quarters. They all want their secretaries, and that secretary is invariably paid, although the head of the board or the members of the commission may have started out without salaries. They have to have their stenographers; they have to have their office help, and when you jump from sixty commissions and boards and departments in 1894 to 152 in 1914, you begin to see why our budget has swollen.

Now, what is the growth of taxation which is partly explained by the situation I have described? In 1895 it was twelve million; that is, the expense outside of our canal and highway bond issues. In 1895 it was twelve million approximately. In 1900 it was seventeen million. In 1905 it was twenty-four million. In 1910 it was thirty-four million, and in 1914 it was forty-two million. The increase in the tax in the last twenty years has been 235 per cent., and the increase in population has been 53 per cent. And it is to the task of reducing as far as possible the expense of government that the efforts of our Committee have been partly directed; and when that has been accomplished we set about the like task of getting a few consolidated departments with similar functions that would be answerable to the head of the government. So much by way of justification of our endeavors and the necessity of our work. Now, by reference to the bill, General Order No. 59, you will find that the first step has been to name

and clearly designate the outlines of executive government. I wish to say in passing that this is not a complete revision of Article V, for, following the rule that we have adopted, we wish to make a subsequent report after the Committee on Canals has had its article passed upon, so that we can then determine a recommendation in conjunction with that Committee to Article V, Section 5, relating to the Canal Board and the Land Board. When that has been done, Mr. Clinton, and your Committee have had your day in court, we will confer with you and move to give a further amendment to Section 5 of Article V, for it is the sense of our Committee that the Land Board and the Canal Board, which is made up of ex-officio members, should be continued, and I believe that is the judgment of your Committee. That is why that is not included here, and for the further reason that those officers named in Article V are constitutional officers, and until we determine the redistribution of the functions of government you cannot tell who those officers are. The article on civil service we have also left untouched. That is a part of Article V, which we are dealing with this afternoon. But the function of a department in detail is not the concern of our Committee. Our Committee has sought straight through to get a framework of government without interfering with the jurisdiction of other committees, and to that we have and will religiously adhere.

Section 1, therefore, is an enumeration of departments. Section 2 provides that at the session immediately following the adoption of this Constitution, the Legislature shall provide by law for the appropriate assignment of all the civil administrative functions of the State government, except those of assistants in the office of the Governor, to the several departments in this article. And it is my opinion, although I am not sure that I am expressing the opinion of the committee, that if this article passes in substantially the form we have presented it, the Legislature of the State of New York, in the coming session, will have put upon it a duty which is equal in importance to that of the Constitutional Convention itself. Excepting in designating new departments, which have been consolidated, we have left the widest latitude to the Legislature as to interior organization of the departments which we have named, and have put the single restriction upon them that any function of government or any subdivision must be placed within one of the grand divisions which we have indicated. We have put the further restriction upon them that a new department — it is a correlative restriction — cannot be created by the Legislature. That does not mean that you cannot do it by constitutional amendment if you desire. It does not put the government of the State of New York in a straight-jacket, but it does do one thing, gentlemen, beyond per-

adventure of doubt. If we have given a proper framework at the end of our deliberations for the guidance of the Legislature, it will stop the nuisance known as ripper legislation, and that is one of the objects of this bill. Now this house is made up of members of both parties. In times past recriminations have been made by each party as against the other. It is not necessary for us to go into the merits of them. We are sitting in a Constitutional Convention and not indulging in a campaign. But it is known,— and with that remark I am going to pass that subject — that there has been such a thing. It is a nuisance to the people of the State and we want to stop it if we can. The next section begins with a definition of the powers of the various departments. It has been the hope of our committee to give just as simple a presentation to the Committee of the Whole through the medium of this bill as we can. For instance, the Attorney-General is continued as a constitutional officer, the head of the Law Department, a department about which there has been very little discussion as to jurisdiction. We simply define him as a constitutional officer at the head of that department, and matters of minor regulation under our proposal we are going to leave to the Legislature. That is true, for instance, of the departments of banking and insurance. We have separated those departments into two departments, not so much, I think, because the committee thought there should be two departments, but that was the recommendation of the Committee on Banking and Insurance, that they have worked well and that they should be kept apart. We have adopted their report in that respect. I think, gentlemen, I will go over the various heads of departments which we have suggested and give you, in a few words, the reasons for presenting the bill in the form that it is. The third section reads: "The head of the department of justice shall be the attorney-general. He shall be elected at the same time and for the same term as the governor." We have left that subject there for the Legislature to deal with if any change is to be made during the next twenty years.

Section 4 deals with the Department of Finance. "The head of the Department of Finance shall be the comptroller. He shall be elected at the same time and for the same term as the governor. Excepting the powers of examination and verification of accounts vested in the department of accounts, he shall have the present powers and duties of the comptroller, subject to the authority of the legislature to increase, modify or diminish the same." In the bill which was first reported a larger division was made than the division which we have recommended here. All financial functions were grouped under one head. Then came a number of criticisms of that which I will now discuss very briefly. Into

that department was put the department of taxation. It is, as I understand, the unanimous opinion of the Committee on Taxation that the powers of assessment of taxes and the department of collection should be kept separate. That criticism was made. The committee waited on our committee or on me, as its chairman, through their chairman, and represented that as a reason why this should be changed. In the second place, a great deal of criticism was made that the office of Comptroller, which is an historic one, which has given pretty good results, which has existed for 118 years, should not be entirely wiped out and its functions changed. Gentlemen in the Convention here, such as Mr. Austin, Mr. Parmenter and a great many others who are in thorough sympathy with the provisions of this bill, made an objection to wiping out this department and making it strictly an auditing department. The sentiment throughout the State seemed to be in favor of continuing that, as far as possible, and I have endeavored to get, as nearly as I could, the feeling of the people themselves on the retention of this department. At various times I have consulted with Senator Wadsworth, whose judgment, I think, is excellent on matters pertaining to State government. His long service in the Assembly as Speaker gave him a minute knowledge of it. Our bill, when it was introduced on August 11th, was immediately sent to Senator Wadsworth. I asked him for any suggestions on the bill and he wrote me three days later as follows: "I used to be fairly familiar with the Comptroller's office, and, as a result, I have always regarded that department as one of the most successfully managed and one of the most efficient departments in the State. For a long period of years I think it must be admitted that the Comptroller's office has been comparatively free from faults and shortcomings. The Comptrollers have, generally speaking, been independent, courageous, and efficient. Doubtless there are exceptions, but very few in number. I have therefore never thought it necessary to make any material change in the functions of the Comptroller. It may or may not seem important, but I might remark that by leaving the Comptroller's office practically as it is to-day you will avoid the creation of another State department. I am not certain that you will gain anything in general efficiency by this proposed amendment with respect to the Comptroller's office and I imagine that the general supervision of the financial affairs of the State will cost more under the proposed scheme than under the present rule." I believe that has been a mooted question in the Legislature. Last year when the tax bill went through there was a great deal of contention that the taxes should be assessed in one department and collected in another. That is the contention of

the Committee on Taxation. I am not going into that subject at any great length this afternoon. I think it is a subject which should be tried out under the present State Tax Department and Comptroller, leaving them as they are, with the power in the Legislature to alter, modify or change the functions of those two departments, only, in any event, seeing that additional departments are not created. Now the scheme proposed in the bill which has been amended provides for the Comptroller's functions, less the power of the examination of accounts. The Comptroller appeared before our committee — I think it was the second or third meeting we had in June — and after making recommendations as to a large finance department, these questions were asked him in the public hearing of the Committee on Governor and Other State Officers together with that of the Finance Committee.

"The Chairman — Who is going to audit the part of the Comptroller that has an administrative function?

"Mr. Travis — I presume that is a matter of detail to be arranged.

"The Chairman — Well, the comptroller will be auditing his own work.

"Mr. Travis — We have no objection to having some one audit the comptroller's work if you wish.

"The Chairman — Throughout the State there should be an independent critic with respect to the other officers to audit his accounts and investigate them without any relation to him, and, I suppose, without fear or favor. But in the case of the administrative functions performed by the comptroller, he would be criticising his own work". Now, under the scheme proposed, we have the comptroller retaining those functions, subject to the power of the Legislature to change, with a separate department of accounts to criticise not only the Department of Public Works, the Department of Taxes or any other departments of the State government, including the Comptroller's office itself, and thus we have a complete system of auditing. Our bill in its original form was put in before the budget plan was passed upon by the Constitutional Convention. It is the opinion of our Committee that, now that the duty of making the budget is upon the Governor, he must of necessity have some State-wide auditing officer whose knowledge of departments is comprehensive and whose advice can be used in framing the budget. That subject, I suppose, will be taken up when we debate this in detail. The department of taxation will remain practically as it is, subject to the power of the Legislature to change. The Department of Accounts, which I have already described, "shall have power to examine and verify all accounts showing the financial transactions of the

state and its several departments and officers". The power of examining accounts cannot be taken away from that department under the Constitution. "The head of the department of the treasury shall be the treasurer." It is important that that office should be continued, for this reason: If he is made a bureau head, there is no check at all upon the comptroller before payment. I believe it is sound business policy to have a check before the money is paid and take your precautions before the horse is stolen out of the barn. The objection to putting the treasurer in with the department of accounts is that it destroys the very thing we have been aiming at, to enable the department of accounts to audit the treasurer as well as the comptroller. If you put him in the same department with the treasurer, you have him auditing himself again, and we might just as well not adopt this scheme. Now I will say, in passing, gentlemen, that, barring changes of verbiage in a few minor details, the department of finance as rearranged is in all substantial particulars the one which you have had before you, although it has not been formally introduced, which I think was drawn by Mr. R. B. Smith, providing the same departments — the department of the Comptroller, the Department of the Treasury, the Department of Taxation and the Department of the Examiner of Accounts, using in the last case the same phraseology. The next department is the Department of Public Works. That is a consolidation of departments. It is a bringing together in one great branch of the government of the work of the canals, the work of the highways, the work of public buildings and of public structures, like dams and reservoirs, generally. It is a big change in our government, or the manner of administering that part of it, and for that reason Section 9 defines, a little more than some of the other sections, what the duties of that department shall be. The head of the department of public works shall be the superintendent of public works. He shall have the construction, care, maintenance and operation of the state's public works, including canals, highways, and all public buildings not assigned by law to any other department and shall provide for the needs of the several state departments in engineering and architecture." One of the witnesses before our Committee, Senator Thompson, brought out a rather small item, but a very significant one. We were on this subject of combining the engineer and the architect and putting them into one department of construction; that is, the Department of Public Works. He said there were over twenty sets of blueprinting machinery in operation to-day by the State of New York, whereas one or two would be sufficient. That is where our money is going, gentlemen. It is by that constant overhead charge and waste in administration. The object of this bill is to put

the engineering functions together and include with it the same thing that is done in the architect's office, combining three things, engineering, construction and designing.

Mr. Quigg — Have you computed how much this officer will have to spend a week?

Mr. Tanner — No, I have not gone into the computation of how much any department will spend every week.

Mr. Quigg — If the Chair please, isn't it likely to amount to as much as $2,000,000 a week?

Mr. Tanner — How much?

Mr. Quigg — Two million dollars a week.

Mr. Tanner — I will ask the gentleman if he has computed it?

Mr. Quigg — I have computed it.

Mr. Tanner — How much is it?

Mr. Quigg — I think it is in the neighborhood of $2,000,000 a week. I just wanted to know —

Mr. Tanner — That would make about $104,000,000 a year.

Mr. Quigg — If this construction work goes on.

Mr. Tanner — If the construction work goes on? Well, for the purposes of this argument I am quite willing to accept Mr. Quigg's figures. If it were $104,000,000, it would not make any difference, in my opinion, for in the Federal government the department of war in the same period of time spends a billion dollars and is one of the best departments in the whole United States. The size of the expenditure is no source of terror that I can see. There is no protection to the people in having the $104,000,000 spent by four or five fellows. On the other hand, there is a lot of protection when you put that expenditure under one head and watch him. That brings out the very feature of the merits of our bill, that we want fewer departments and somebody to watch those departments. Now, gentlemen, I am perfectly willing to answer any question, but this is a somewhat complicated subject, and I trust you will not feel that I am discourteous if I ask to continue my remarks to the end, and then I will answer such questions as I am able. As a general thing, I think in discussing a subject like this you lose continuity of thought and are distracted by questions of details. We took up the question of public works with a good deal of care, and it is on the recommendation of the Superintendent of Public Works and the State Engineer and Surveyor that we have made this recommendation. Here came in one of the first bits of humor that the Committee met with in the course of long and dreary hearings. Here were two State officers recommending one thing, both of them knowing that the official life of one of them would cease if the recommendation was adopted. While my experience in political life has not been as long as that of some of the gentlemen on the floor of this

Convention, I must say that I have seen very few State officers giving up jobs unless there was good reason for it. We called General Wotherspoon and Mr. Williams and Mr. Duffy before us, and, while I know reading testimony is a little dull, in this case, I am going to read a short extract from the testimony taken on May 25th. I may say that the recommendations of General Wotherspoon, because of his long experience in the United States Army as the Chief of the General Staff, a man who has had administrative functions all over this continent and in the Philippines, are of the utmost value. I believe that he is commonly conceded to be an efficient superintendent of public works. He said: "A true department of public works should have jurisdiction not only over the repair, maintenance and operation of State canals, the building of bridges, dams, walls and dykes, the improvement of harbors, bays, rivers and creeks, which work is already entrusted to the department, but also over the construction and repair of State buildings and of State highways. In fact, every improvement of that kind should be placed under his charge. In such a department the bureaus of engineering and architecture could be maintained to furnish to the executive head such plans and specifications as might be required and such technical data as might be necessary. There would be no duplication of engineering forces, as at present. The bureau of engineering would be sufficient to furnish technical men for canal repair work or for highway construction, as needed. And in the construction of State buildings an architectural bureau would at all times be supplemented by technical men from the engineering bureau." He further testified that there was a conflict between the engineering branch of government and the superintendent of public works, and in that respect he was concurred with by Mr. Williams, the State Engineer and Surveyor. General Wotherspoon testified: "There have been differences of opinion between the State Engineer's office and mine as to the use of water on various levels where he has a contractor working, and he naturally wants to have the filling of the canal postponed to as late a date as possible in order that the contractor can complete his work. My interest, as superintendent, being in opening navigation, is to have the canal filled as promptly as possible and the canal operating." Now this is a sigle thing to which I would call your special attention. General Wotherspoon said: "I think that such a department as I have suggested can be created and maintained in an efficient condition for all the public needs on the basis of one-half of the personnel now being employed in those broad activities." On that ground alone, with that great number of officials who are drawing pay from the State unnecessarily, with those office-holders

holding in many cases not sinecures necessarily, but performing unnecessary functions, if with the personnel of those departments which we propose to consolidate into the department of public works we can reduce the personnel by one-half, in view of the enormous expenditures that Mr. Quigg has mentioned, I think it is the duty of this Convention to do it. Now don't let's be alarmed at the size of the work we are going to give the superintendent of public works. It developed on the testimony that the war department has as great a variety of work as the departments that we suggest in this department of public works to be created. It has the building of canals up to the size of the Panama canal. That was done by the war department. It builds fortifications — now I am speaking about the United States department of public works which is swallowed up by the war department. It builds roads in the Yellowstone Park, in the Yosemite Park, in Glacier Park. The war department builds telegraph lines and lays cables, it builds dams. The war department even includes the superintendent of public grounds and buildings. And, in addition to all these functions, which are far greater than New York State has, the war department cares for the military needs of the United States. Now, unless some one is prepared to say that that department is less efficient than the department of highways or public works, it seems to me there is no argument whatever against the combining of them. There are arguments in favor of combining them, that have just been set forth. Mr. Williams, the State Engineer and Surveyor, has had two terms. He is a man of wide experience. He submitted a memorandum in addition to his testimony in which he says: "The work of the Superintendent of Public Works and of the State Engineer and Surveyor overlap to a greater extent, I believe, than any other two branches of the State government. Allow me to enumerate a few cases that may illustrate my contention. The State Engineer prepares plans and specifications. The Superintendent of Public Works awards the contract. The State Engineer supervises construction, with the forces under his direction, but the acceptance of the finished work is vested in the Superintendent of Public Works. The State Engineer prepares maps for appropriating land required for canal construction and the Superintendent of Public Works serves those maps on the owners of the land. Alterations to contracts are prepared by the State Engineer but must be approved by the Superintendent of Public Works before presenting the same to the Canal Board for approval."

Then he goes on with a long list of things, showing the conflict of authority and the overlapping of functions. Then he makes a final recommendation, which is the last I shall read: "On

work performed under special appropriations it is usually provided that the work shall be performed by the Superintendent of Public Works on plans and specifications prepared by the State Engineer. During construction, the State Engineer supervises the work but it is provided that the Superintendent of Public Works may appoint an inspector. This is purely a duplication of work. I am firmly of the opinion that all work of the State dealing with engineering matters should be placed in control of a department of engineering and, considering the importance of this work and the honorable record of the engineering department for so many years, I submit that serious consideration should be given to its retention." Now, these two departments are absolutely in accord on the question of consolidation, the only difference being that General Wotherspoon thinks that the Governor should have the right to name either an engineer or layman of great ability, and Mr. Williams, the engineer, thinks that there should be an engineer at the head of the department. I believe that pretty nearly every engineer in the State — we have had a number of them before the Committee — believes there should be this consolidation and the engineers generally think that one of their profession should be at the head of it. But the Committee declined to limit the Governor in the appointment of a head of that department to the single class of engineers, on the ground that a technical man is too expensive anyway and to get one with enough administrative capacity to do all his work might be a hard task. The difficulty anyway is that you cannot get the best men to become heads of departments for what we are willing to pay them, and we declined to tie the Governor's hands in that way. He can appoint an engineer if he can find one with the proper qualifications or he can appoint a layman under the same conditions. Now, the next department is the department of health. We simply provide that there shall be a Commissioner of Health. The work of the health department is a work of great importance. It is commonly conceded to be so needful to the State that we have decided that the commissioner ought to go in as a constitutional officer, because if you are going to put a limitation on the Legislature that they shall stop this creating of new departments, you must propose a comprehensive scheme under which they can distribute these functions. The health work of the State is so important that I doubt if any man in his right senses would recommend that it be wiped out. Therefore we have concluded that this and some other departments, the functions of which are easily defined, should be put into the Constitution. The same may be said of the head of the department of agriculture. He should be made a constitutional officer. Now I will call your attention at this time to the

situation of our Constitution. So far as naming the constitutional officers is concerned, it is purely a hit-or-miss doctrine. For instance, the Superintendent of Prisons is a constitutional officer, and the Superintendent of Public Works is a constitutional officer, but the Commissioner of Highways and the Commissioner of Agriculture are not, for what reason I am sure I do not know. Now we either ought to keep all the heads of these departments out or, if we are going to deal with the subject in the Constitution, we should make a clean-cut, comprehensive and proper scheme and include all of them. The Department of Charities and Corrections is a subject to which we have given the greatest care. Article 8 of the Constitution deals with the subject at great length. Article 8 is not a primary concern of the Committee which is making this report. As I have said before, our Committee is trying to stick to our own last, and we have not tried to touch the many provisions of Article 8 relating to the charities and corrections of the State. We have left that to the Committee on Prisons and the Committee on Charities. It is not particularly our affair, and therefore we have not given any consideration to those subjects only so far as they affect the general framework of government. In the Department of Charities and Corrections we have sought, so far as we deal with the subject at all, to do one thing. We have tried in that case, as with all the other departments, to perpetuate the good features, to keep them as largely as possible as they are, leaving the power in the Legislature to change them as it sees fit. But this subject of charities and corrections, it seems to me, has never been dealt with in a comprehensive way. The care of the insane, I believe it is commonly conceded, has been admirable. The Committee has made its own report, that offered by Mr. Steinbrink, and it has been adopted. As appeared on the argument on the Steinbrink amendment, it does not conflict with the proposal that we have in Section 12 of our article, but merely gives power of supervision and inspection over the wards of the State by the Secretary of Charities and Corrections. What is the reason for that? We did not want to interfere with the Hospital Department. We have not done so. The Constitutional Bodies, the Commission of Charities, the Hospital Commission and the Prisons Commission, set forth in Article 8 of the Constitution, are left there. But in our article we have tried to do one thing, and that is to get a co-ordinating force somewhere to get together the work of the care of the wards of the State. Twenty-five per cent. of the funds of the State are spent for them and yet what do we find? For instance, there is a reformatory for boys down at Yorktown Heights. We spent $900,000 on that. The institution is 11 years old. It has a superintendent and 20 employees, and

it has never had an inmate in 11 years, and we are spending a thousand dollars a week in Yorktown Heights and getting nothing for it. The Mohansic State Hospital has cost over $800,000, and has never had an inmate yet. The Beekman Farm Colony For Tramps, which has been described as a freak idea, I don't know how much that cost, but it never had even a tramp in all the course of its existence, and there are lots of them abroad in the land at the present time. The great institution for the feeble-minded in Rockland county has cost $3,000,000 to the State. It was planned to have 2,500 inmates, and at the present time, although we spent $3,000,000 on it, it can only house 100 inmates. In the meantime, the home of the superintendent down there, in that feeble-minded colony, only cost the State of New York $50,000.

Down at Valatie, there is a home for women convicted of misdemeanor five times, and it has Italian marble bathrooms with brass trimmings. Down at Bear Mountain we had a site for the prison, and then it was abandoned. At Wingdale, we got a little further. We purchased the site and we went all the way to putting up foundations for buildings and abandoned it. Now, what does that mean? It means that the State can only spend so much for its wards, and every time you waste a dollar in one place you take it away from some poor unfortunate in the other; and there has got to be some supervisory and inspecting force to co-ordinate the appropriations for the poor and unfortunate of this State, or we will go on with this wasteful system which cannot be permitted to endure. Now, you are going to have a budget system, gentlemen. I hope it will be a scientific one. I believe that it will. But how can the Governor of the State make his recommendations with 44 different sets of boards of control trying to get something for their institutions and nobody to go over the whole system, telling where to spend this and where to spend that. The fact that there is such a need is shown by the list I have read to you here. That list was contained in a report dated May 6, 1914, to the Assembly, and it is a part of the public records of the State. And, while our article does not seek to interfere with the control of the separate institutions of the State—we are willing to trust to local boards of governors, or control, to do that—we do seek to co-ordinate the various departments caring for the wards of the State, so that an appropriation will be made and we will get something for our money. Sections 14 and 13 deal with the heads of the department of banking and a department of insurance. We have stopped just where the committee on banking and insurance stopped, and have sought to make them constitutional officers, constitutional officers for the reasons I have explained. Section 15 is a good deal like the department of health. We name it the Department of Labor

and Industry and it shall be an industrial commission. I suppose that will be the subject of a further report, but we have simply provided for it in our scheme so that it will be a complete and comprehensive one. The Department of Education, it is provided, shall be administered by the University of the State of New York; the chief administrative officer shall be appointed by the regents, and here again we have found a magnificent institution, and we have left well enough alone. Section 17 deals with the Public Service Commissions. We have not changed that, gentlemen, that was the amendment adopted an evening or two ago. Section No. 18 deals with the department of Conservation. We simply mention it in this scheme, and the revision committee will put the article adopted a few days ago in its proper place in the Constitution. Section 19 deals with the civil service, and that is a subject we had recognized in the Constitution, and we provide there, further, a Civil Service Commission running for full terms of six years, that is, overlapping terms so that there shall be continuity of service.

For the present I will pass over section 20, for that raises the second great branch of this question which we shall have to discuss, and call your attention to section 21, which provides that the Attorney-General and the Comptroller, which are elective officers, shall be removable from office by impeachment in the same manner as the Governor or they may be removed by the Senate by a vote of two-thirds of all the members elected thereto upon the recommendation of the Governor, stating the grounds therefor. Then we give power substantially the same as that in the public officers law to fill a vacancy. That will be discussed in general, and it is not enough of a general question to warrant discussing now. Then we include something which I think is highly important, which makes all heads of departments subject to impeachment in the same manner as the Governor. Now, if these schemes go through you are going to have some public officials with great enough power and dignity and importance to warrant their removal by impeachment, if the Legislature decides that the Governor who appoints them is not doing his full duty. It is in accord with the debates on the floor of this Convention the other night, when it was brought out with great force and eloquence that the way to get rid of public officers in an orderly manner should be made easier, and I think that this clause had the unanimous support, if I recollect, of every member of the Committee on Governor and Other State Officers. Now, gentlemen, I refer to section 20. It provides that the heads of all departments and the members of all commissions unless otherwise provided for in this Constitution, shall be appointed by the Governor by and with the advice and

consent of the Senate and may be removed by the Governor in his discretion. Gentlemen, that brings us squarely up to the point which I believe is one of the most important subjects to be considered by this Convention, and that is, if you are going to continue in your Constitution the mandate that the Governor shall see that the laws are faithfully executed — and my contention is a very simple one, which I am willing to stand on to the last ditch, and that is, if you are going to put that mandate on him you must give him the power. Now, that is all that section does. It provides that the heads of departments, unless there is an exception named in the Constitution, shall be appointed by the Governor, and that those men shall be removed by the Governor, if they are not satisfactory in the performance of their duty. That does give great power to the Governor. It gives him great power to make good! And if the people are not willing to give him power to make good, they should take off his shoulders the duties which they have placed on him in the Constitution. Now we have here as provided in the article like the conservation article, or the public utilities article, and some others, a provision that gives a hearing before the Senate. Those articles deal with subjects that are different from purely administrative duties. Those commissions are commissions to which have been delegated judicial, or what you might call sub-legislative powers, and they are not really executive in their nature and that is the basis of the distinction in the treatment which our Committee has given them. They should be independent. Those committees, to a great extent. But when you have a man who is nothing but the hand of the Governor to execute purely administrative duties, you must give him the power to send that man away. And this does another thing, it wipes out a little bit of hypocrisy in our present system; when the Governor wants to get rid of a man in a department, a man with whom he cannot work, who cannot produce the results — and that is all we care about — he generally gets rid of him, and you know it and I know it, and this thing of fixing up charges against a man and then haling him before the bar of public opinion, when only one result can follow, blackens a man's reputation and does not change the result. Our Committee has met that proposition squarely. We have said the Governor shall have the sole responsibility of removing that class of officials and the people will look squarely to the Governor for the execution of the power which has been placed on him.

Now what has been the guiding force in making the recommendations that we have as to election or appointment? The Attorney-General and the Comptroller are left elective, and I believe this Convention is entitled to a dignified, straightforward

statement from our Committee as to why we did it. Our Committee was pretty evenly divided on the subject. We have studied this thing month after month and we decided that instead of asking for everything in the line of a reduced number of elective officers, we make a straightforward statement that there were a great many men who wanted to see the Comptroller elected and the Attorney-General elected and represent as closely as we can the sentiment in our Committee and what we believe is the sentiment in the community. I am very frank to say, every time the question of the election of the Comptroller or the Attorney-General came up I voted against it. I am in favor of making them appointive; but the Committee did not decide that way and we have here a report which we are willing to place before you in the frank position of an attempt to get the best sentiment all over the State in a report which we could submit to you for your action. There are in this Convention a great many people who are speaking for the people. I do not believe one of us would admit that he did not strive to represent the people. I am not sure whether I represent them or not. I know what I think, that the only way you can find out what the people want is to give them a chance to tell at the ballot box; and the only way you can tell in advance of that act is to get men from all over the State together in a Convention, representing every shade of political belief, of geography, of race, and occupation, and when you have done that, you have a fairly good sample of what the people think. That is why we are here in Convention to-day. A lot of us could have sat down in our studies and have written an article or written a branch of the Constitution, and I know some men who have tried to do it, which would have satisfied them a great deal better than anything we shall jointly produce. But that is the object of a constitutional convention, and if it is sincere that is the object of a political convention. And I believe we are justified in this Committee in making the recommendation that we have, because we have acted on absolutely the best light we could get.

Now, I would not discuss political platforms at all, if we did not all say pretty nearly the same thing, but I am going to discuss them. I am not going to try to hold any man to his pledge except in so far as I believe that the expression of men gathered from all over the State in a problem like this has a great deal of moral, binding force on us. That is the reason I was willing to surrender my views, in part, because I saw that parties and individuals from all over the State had agreed upon it. Now I am going to take up my own party first, to see what it said on the subject. Our party has held a great many conventions since 1912. We held a State convention in Saratoga, September 26,

1912, the permanent chairman of which was my distinguished friend, Senator Brackett, from Saratoga. This subject, gentlemen, of making a smaller number of State officers and of concentrating responsibility on the man upon whom we make a mandate of performance is not a new question at all. Governor Hoffman, in 1872, wrote one of the best short ballot messages I have ever read, and Grover Cleveland wrote another. Now let us go back to what the Republicans have to say: This convention, September 26, 1912, said: "It is the purpose of the Republican party to substitute simple, direct, economical and convenient methods by which the voters of the state may express and make effective their wishes, to this end: We favor the short ballot." Well, that was on September 26, 1912. We had another convention the next year, September 23d. How much had the party changed? That convention said: "We reaffirm the declaration of the platform of 1912, in the following words: 'It is the purpose of the Republican party to substitute simple, direct, economical and convenient methods by which the voters of the state may express and make effective their wishes, to this end: We favor the short ballot'". Well, that was not enough for that year. We had a conference of Republicans at the Waldorf, and at that time Senator Root made one of the most eloquent speeches I ever heard on this subject of direct authority to and responsibility from the Governor, and on that occasion I introduced a short ballot proposed amendment, and I want to tell you what happened at that time: There were two amendments to this short ballot provision that I put in, and they were both beaten, and that amendment goes further than the one now before you for consideration. I am reading now from the official records in each one of those cases. "The chairman called up the question on the adoption of the resolution offered by Mr. Tanner, and it was unanimously adopted."

A Delegate — Read the resolution.

Mr. Tanner — I am asked to read the resolution: "Whereas, the present system by which the electors of this State are required to vote for many purely administrative officers puts upon them a task which is impracticable for them to perform without artificial aids which in practice throw the control over those officers to bodies only indirectly responsible to the people, and Whereas, this practice is also in violation of the best principles of organization which require that the governor, who, under the constitution, is the responsible chief executive, should be so in fact, and that he should have the power to select his official agents; Therefore, be it resolved that we favor the application to the State government of the principle of the Short Ballot, which is that only those offices should be elective which are important enough to attract (and

deserve) public examination. And be it further resolved, that, in compliance with this principle, we urge the representative of the Republican party of this state in the senate and assembly to support a resolution providing for the submission to the people of an amendment to the constitution, under which amendment it will be the duty of governor to appoint the secretary of state, the state treasurer, the comptroller, the attorney-general and the state engineer and surveyor, leaving only the governor and lieutenant-governor as elective state executive officers." Now, I know it is going to be said before we get through with this subject that I and the committee of which I am chairman is making war on the Legislature and their powers. It has been said before, and it will be said again. But after these platforms that I have read, what did the Legislature of 1914 do? It prepared a resolution similar in all substantial respects to the one that I have just read, and it had every vote of every Republican legislator that sat in this Assembly, and my old friend, Mr. Bockes, who signed a minority report against the short ballot to this committee, sat on the Judiciary Committee that reported that amendment out, and he voted for it again on the floor of this Assembly. Now, that does not mean he has not a perfect right to change his mind, but it shows the burden of proof is upon him to show why he did it, because it is to be presumed that when a committee sits and comes to a conclusion by unanimous vote, they used intelligence in doing it. I am only going to read from one more platform, but that is the Republican platform which we adopted last fall. Now that was held away along in the latter part of August, and we Republicans, to be sure that we would get a sane, safe, responsible platform, had a drafting committee appointed on May 26th, some few months before, to present resolutions before that body. Well, they prepared it. They had several of them. And on that committee on resolutions there were twelve men who are now distinguished delegates to this Convention, and they reported out something on this subject which I shall read you very shortly. I wish to say that my friend from Saratoga was on that committee, and I do great honor to him in saying that he was the only man who sits in this Constitutional Convention that had a word to say against it at that time.

Mr. Betts — I made a speech against it myself.

Mr. Tanner — It is not reported in the official report. I don't remember hearing it. Of course, I take the gentleman's word. I amend it to say, then, that there are two distinguished gentlemen in this Convention who did it. But there were nearly a thousand men in the Republican Convention who did not agree with these two gentlemen. Now that is not a very radical declaration in that

platform, but I am going to read it to you. It is on page 95, and I want to say here with perfect frankness that the Republican party on the eve of this Convention did not try to bind the delegates to this Convention. The platform says the delegates have the right to approach these Constitutional questions with an open mind. Then it goes on to say by pretty nearly unanimous voice, "We recommend a substantial reduction in the number of elective officials by the application of the principle of the short ballot to the executive officers of the State. To prevent the multiplication of offices we recommend that the various administrative functions of the State so far as practicable be vested in a limited number of departments. The present duplication of effort and expense in the public institutions of the State should be remedied by the establishment of a simpler and better organized system," and this very thing was recommended in similar words in the Governor's message, when he took office on the first of January. Now, gentlemen, we have brought ourselves squarely within the letter of everyone of those recommendations. So much for the Republican side of the House. I have spent a great deal of time on this, gentlemen. At various times I have spoken and written on it. But I have never been able to get as clear, forceful and unequivocal a statement of the proposition which we have embodied in our bill as the Democratic platform of 1914, and I want to take off my hat to Senator Wagner, who was the leading spirit in drawing that section.

Mr. Unger — Wasn't the Democratic platform of 1914 rejected by the people?

Mr. Tanner — Oh, yes; by a large vote; by a large vote. But you had it loaded down with so many other things, they would not stand. Anyway, I think it was a good platform. And I am going to read it to you, and I am going to be tempted to read it to you twice, because it contains the very essence of what we are contending for. "There should be no divided authority or responsibility in executing and administering the laws of the State." You know it is extraordinary how we all get together on some of these fundamental things. "The time has come to give the people control of their executive government." I think so, too. The responsibility should be centered — where? In the Governor. "He should have the absolute control of removal. The various boards and commissions should be made subject to the control of the Governor. General rules should be prescribed by the Constitution on these subjects for the organization of new departments. The people should be able to know whom to hold responsible for failure at any execution or maladministration of their law, and not have their attention divided, distracted by the number of

elective, executive and administrative officials, but be unable to concentrate their attention and to devote their energies to the election or defeat of a few officials." That is what, Mr. Unger, you were committed to last year. "Therefore, to center responsibility for executive and administrative action, to give full force and effect to the opinion of the people." Now, gentlemen, I know I have made a long, wearisome speech, but I beg of you on this side of the House to listen to this. "We favor an amendment to the Constitution providing for the election only of the Governor, Lieutenant-Governor, Comptroller and Attorney-General. And we pledge ourselves to the preparation and submission of a scheme of constitutional amendment which shall concentrate responsibility for executive management, shall simplify the administrative system of the State, and shall provide general rules of departmental organization for the future guidance of the Legislature." Why, I should have put that report in as the introduction to the report of the Committee on Governor and Other State Officers. When our report went out, and it was seen that we had modified somewhat the Comptroller, a lot of my Democratic brethren said, "We won't support that, because you have changed the Comptroller." Well, we have changed him back, and it is squarely on the Democratic platform. Now, gentlemen, you are constitutional delegates, and not for one moment do I try to dictate that any constitutional delegate should be forced into a line of conduct by a party platform. But most of us here are party men. And a lot of us want to go back to the Convention system. I do. I believe in party government. I believe in their responsibility. I believe that the only way that you can have a party that represents anything is to get together and talk it over, as we have for four months, and you arrive at a conclusion that is at least worth something. But what a piece of hypocrisy it is, when we get together under the convention system, and there are a lot of us in this Convention who have been members of conventions, and write a platform, and then repudiate four that were written, one after the other. The value of those platforms is that they show that both parties knew that the people wanted that result when we get two parties advocating the same thing. It is a neck and neck race towards what the people want, and if we go away from this Convention, after that declaration from two parties repeated, particularly by my own party, year after year and don't give the people the chance to vote on the thing that we said on the eve of a convention should be done, the work of this Convention will merit condemnation at the polls. Gentlemen, you have listened with a great deal of patience to perhaps too long a presentation of this subject. But with the great State of New York doubling its tax rate in a decade or so, with numerous departments which

are frittering away the power of the Governor, making co-ordinated effort towards good statemanship and administration impossible. I believe that it is the duty of this Convention — and this article is framed so that both parties can claim the credit for it — it is the duty, I solemnly believe, to come in on a sane, not radical, but effective measure which will afford relief. We have sat here for four months. A lot of us have a business which has been absolutely neglected. It has been a labor of patriotism and love for the State in which we live, and, gentlemen, don't let us go away from here without leaving some fruits of it. The confines of this State, clear from one end to another are asking for something substantial along this line. My only regret is that in the reduction of departments and the concentration of responsibility we have not gone far enough. They are looking to us for help, and on a great big comprehensive scheme like this, perhaps imperfect in some respects, you won't have another opportunity for twenty years, because the Legislature is not capable of drawing a scheme like this and attending to the legislative business of the State at the same time. As it is now you must do it or let it go. As it is now you must decide these questions and then leave it to the people. The wisdom of the people is greater, perhaps, than the wisdom of this Convention, but it is the only way we have of doing business, and in the great things which we have done in this Convention, providing for a State budget which will reduce taxation, in the simplification of judicial procedure, in the valuable reports from a lot of these committees, and in framing a companion piece, which I believe this bill does, for the budget, a bill which, if you reject, or something similar to it, will make the budget largely ineffective — if we can do something of real value for the people of the State we can be sure that you cannot fool them. I believe there is enough merit in this Constitution, so far as we have adopted it, plus this bill, which I ask you to adopt this afternoon, to appeal to the good judgment of the people that we all have claimed to represent, and all I ask of you gentlemen is that you give them a chance to vote on this question.

Mr. A. E. Smith — Speaking for myself, and for myself alone, I would not allow the gentleman that just sat down to think for a moment that I am less faithful to the pledges and promises of my party than he is to the pledges and promises of his. I am just as strong and just as ardent a party man as there is around the circle. What I am going to say about this, I am going to ask you to believe is said by me with the intention of perfecting the bill. My criticisms of it will be because I believe it is not in certain respects in keeping with your platform and I know that it is

not in keeping with mine. There is not a man around this circle but what will be obliged to admit that this short ballot idea and this consolidation of departments that must of necessity fellow it, is purely experimental. The Committee started with the statement that there are 152 boards and commissions in the State of New York. Of course, by comparison with other years, that 152 looks ridiculous. But the fact of the matter is that in those 152 we have included all the Boards of Managers of the different State Hospitals, of the different enterprises of the State, as we may call them, like Fire Island Park, Letchworth Park, John Boyd Thatcher Park, and Saratoga Monument and the residence of General Schuyler and the residence of Sir William Johnson and the residence of General Washington and the residence of General Herkimer. Why, these are not departments of the State government. They perform no function whatever in the business of the State. Not a dollar of money is appropriated for them.

Mr. Tanner — Will you point to anything in our bill that continues these departments? Doesn't it rather give the Legislature, of which you are a very influential member, the power to do away with them?

Mr. Smith — No, it does not.

Mr. Tanner — Why?

Mr. A. E. Smith — Because it simply puts them in the Public Works Department under your bill.

Mr. Tanner — You can still abolish them any time you want to.

Mr. A. E. Smith — Well, you are going to abolish them by this.

Mr. Tanner — Oh, no.

Mr. A. E. Smith — Well, are you not giving the Legislature a new power? Of course not. We can always abolish them. We always had that power. That is the beginning of the point that I wanted to make; that you have not cured the evil by this bill. You have given the Legislature the power, you say, to do something that it could always do.

Mr. Stimson — But which you did not.

Mr. A. E. Smith — The gentleman says, "But which you did not." Every Legislature and every Governor has a different policy about such things, and when any of the gentlemen that are representing the State Officers Committee to-day become Governors they will find the residence of some general some place in the State they would like to have a brass tablet on the side of with their name on it, as being the Governor that insisted upon its purchase, so that they will have a building with a monument to their memory all the rest of the years that the State lives and

there will be a new commission to take care of that, and there is nothing in here to stop it. Now, something was said about preventing ripper legislation. There is nothing in here that prevents any ripper legislation. I take it that the gentleman that made that statement is not acquainted with the 1915 brand of ripper. It is a real new production, and I ought to make him acquainted with it. Formerly if it was necessary to change a department by moving it into some other branch of activity, changing its name, instead of calling it the Forest, Fish and Game Commission or the Department of Water Supply and the Department of Fish and Game or the Department of Forestry, you could call it the Conservation Commission Unquestionably this will stop that kind of ripper. But this new specimen of 1915 is another kind of ripper. It just simply says, for instance, in the State Fair Commission, "On the 15th day of April, the present State Fair Commission shall terminate and within ten days after this act passes the Governor shall appoint a new one." No doubt that that has the desired effect. That takes it out right like this and leaves nothing to it. Now, the whole theory behind this bill in question, if I understand it, I think I heard it said so, is to try to bring into this State the federal plan of responsibility in the government. I want to submit to this Convention my idea. I think that there is less responsibility upon the President of the United States under our federal system for the expenditure of money than there is in the Governor of this State at the present time, and I would hardly know that if it was not for the report of the Finance Committee brought in by Mr. Stimson. I may know it, but I might not know how to express it. Right in the document of the Convention here there is a quotation from Mr. James Bryce, in the American Commonwealth: "So long as the debit side of the national account is handled by one set of men, the credit side by another set, both sets working separately and in secret, without public responsibility and without intervention on the part of the executive official who is nominally responsible." "Nominally responsible." Further down he says —

Mr. Stimson — The gentleman realizes that Mr. Bryce in that was speaking of Congress and not of the executive branch of the government when he speaks of the two sets of men.

Mr. Smith — Yes.

Mr. Stimson — He was speaking congressionally, then.

Mr. A. E. Smith — Yes, but he said that this went on without the intervention on the part of the executive official who is nominally responsible.

Mr. Stimson — True, he was speaking of the fact that the President had not the power which we have given to the Governor, or intend to give him in the way of giving him the right to go

onto the floor of the House and discuss the financial matters with Congress. It is true the President of the United States does not have that power.

Mr. A. E. Smith — Well, it is also true that James Bryce says that the President is only nominally responsible for the heads of his cabinet who make the requests for the money. Now, I don't want to put anything into his mouth, but that seems to me to be what he said.

Mr. Wickersham — The gentleman knows that the President has the right of removal of a member of his cabinet and, therefore, he has the perfect responsibility and, therefore, he has that power.

Mr. A. E. Smith — Yes. Well, I will speak of that when you get to that in this bill and I will show you where it is wrong, where you don't go far enough.

Mr. Stimson — The gentleman knows, further, that although the Senate of the United States has the right to confirm cabinet appointments, it is a right which is never exercised in practice, and, therefore, the President has the absolute right to appoint all of his cabinet.

Mr. A. E. Smith — Well, you should give that to the Governor also, but you don't do it. Now, let me ask — under the so-called cabinet system, at what time, during the memory of any man in this Chamber, was any Governor of this State or any President of the United States elected on the issue of the financial condition of either the country or the State. How many people pay any attention to it? Absolutely nobody. Let us go back over the history of the State for a few years. There were only two men in the State since 1901 who approached the Governor's office with any knowledge of the State or its business affairs. Only two. They were Odell and Higgins. Governor Higgins probably stood above them all in his knowledge of the State's business. He was Chairman of the Senate Finance Committee for a number of years. Could he have been re-elected? Would there have been any consideration given to the fact if he was a candidate for re-election, that there was a surplus in the treasury of this State of $15,000,000? Everybody knows there was no thought of such a thing. Probably the poorest Governor, from a business standpoint, was Governor Hughes. As a business man he knew nothing about this State. Was he re-elected on his financial issues? No. On moral issues. He closed the race-tracks, killed off the Black Horse Cavalry, and gave us direct primaries. Just put the three things together, and the people of this State sent him back in the Governor's office and they didn't care anything about his financial record. Now, Governor, or Senator Wagner, told you the other day of the mistake that was made during the Odell

administration in regard to the sinking fund which was cured in the Higgins administration. With that lesson before him Governor Hughes made the same mistake. With that before him, he made that mistake. I don't know whether I can get anybody to agree with me or not, but I am of the opinion that as great a mistake as was made during any administration in ten years was the changing of the line of the canal, because the recent Court of Appeals decision in the railroad damage cases shows that it is going to add to the cost of the canal nearly $22,000,000. It was a business mistake. Anybody saying anything about that? Not at all. Let us follow along to Governor Dix. The appropriation bill in the first year of Governor Dix's administration was two million dollars less than the last four years of Governor Hughes. What was the matter with Governor Dix? Why, he signed the Levy election law, and that was enough. People didn't step to look at his financial record, any more than they did at the record of Governor Hughes, Governor Higgins, or Governor Odell. They didn't pay a bit of attention to it. If you think by bringing these together, you are going to have the people hereafter look at just the one Governor, the one man in the State, and hold him as the responsible person for the administration of all these affairs, that is a very grievous mistake. I don't think the man exists that can do it anyway, as a cold matter of fact. I am taking it from the point of view of whether or not it is a physical possibility. I don't think the man lives that can do it, allowing that he must sleep eight hours out of twenty-four, and that he must eat during two, or an hour and a half, out of twenty-four, there would not be enough time left, if you give him a vacation and let him attend the functions throughout the State that the Governor is supposed to attend and should attend, he could not possibly do it. As far as personal responsibility goes, we have in this State at the present moment a living example of just what that is. The only commissioner that the Governor can forthwith remove is the Superintendent of Prisons, and look at the condition of affairs, look at what has been going on between Sing Sing and Albany in the last five months. Look at how successively the buck has been passed from one to the other of Warden Osborne's new idea of reforming men. Nobody wants the responsibility for it. Now, I am unable to understand what becomes of the Adjutant-General by this. He is a very important department of the State government and there is no provision made for his office.

Mr. Tanner — Have you referred to that part of the article which limits it to the civil administrative and executive functions of the State government?

Mr. A. E. Smith — Where is that? "There shall be the following civil departments in the State government."

Mr. Tanner — Section 2.

Mr. A. E. Smith — No, I did not. I started right at the departments. He will remain then, I take it, just as he is. I was figuring where to put him. I was going to put him in with the other generals. Now, of course, just as it stands, it leaves but few departments to be disposed of by the Legislature. The Departments of Foods and Markets would unquestionably go into the Agriculture Department. The New York-New Jersey Bridge Commission; I am not sure where it would go. Won't go any place, if they leave it to me. It will go out, and so will the State Racing Commission. The Board of Port Wardens, I don't know where they will go, but there will be some place for that next winter. That will go under the fellow that has the best name for keeping his promises. Now, I find fault with this bill, because it will permit this consolidation of departments to occur right after the first of next January. That should not be. It may be well to pass the law in the beginning of next year, but that should not become effective until the —

Mr. Tanner — I agree with you.

Mr. A. E. Smith — Until the first of the following January, and if that is not so, I will offer an amendment.

Mr. Tanner — If you promise me to read the bill through before you offer the amendment, and then if you don't find a provision in it, I will support your amendment.

Mr. A. E. Smith — Well, I will say this, that I did not read this last print of it, but I know that was the way it was in the first one. Here is section 2. I don't find anything in there which will give me my cure. All I see in here is that, "At the session immediately following the adoption of this Constitution, the Legislature shall provide by law for the appropriate assignment of all the civil administrative and executive functions of the State government." That is at the next session. Now, my point is that that should not become effective until the end of next year. In other words, this administration should go through with as little change as possible.

Mr. Tanner — Will you just yield a moment while I point that out to you?

Mr. A. E. Smith — Yes.

Mr. Tanner — In section 2 of the bill we specifically provide that the heads of all bureaus and departments shall be continued in office, subject to the power of the Legislature to reduce them. In other words, if you want to do away with a department, you can, but you have got to continue the head of a department or the bureau, or the commission, in one of these main divisions. The bill also provides that all the elective officers shall continue in office until the end of their term, which, I think, automatically

puts the matter over until 1917. That is, the operation of the statutes to be enacted the coming year, and if that is not plain I am willing to accept an amendment which will accomplish that result. That is only a fair thing to do.

Mr. A. E. Smith — That is perfectly plain, so far as your elected officials go, but you must remember that you go a little further here in connection with the various State departments. For instance, by the provisions of this bill you make no provision whatever for the Department of Excise. Now, what becomes of the Department of Excise? The Legislature must at the coming session put it in one of these departments.

Mr. Stimson — I want to call the gentleman's attention to the following words, " pending the assignment of the civil, executive and administrative functions by the Legislature pursuant to the direction of this section, the powers and duties of the several departments, boards, commissions and offices are continued."

Mr. Wagner — Does not this provide for the redistribution of powers into these narrowed-down departments, and that it is to be done by the Legislature this coming session?

Mr. A. E. Smith — That is the point.

Mr. Wagner — And the people have the right to elect an entirely new Legislature to do this work of distribution?

Mr. A. E. Smith — That is exactly the point. That is the reason why I say that any legislation carrying this into effect should not be operative until the end of the year.

Mr. Stimson — Mr. Chairman, there is nothing which prevents the time of that taking effect being made the first of January, 1917.

Mr. A. E. Smith — That is the point. There is nothing in there to prevent it, but I want to make it mandatory that is the way it will be because we want to get this work done some time early in the year 1916. We don't want bargaining going on all through the capitol, and the Legislature in session until very nearly election day making their minds up which of these particular officers they ought to give these functions to. You must remember we have a Republican Senate elected for another year, and the people are not going to have that chance to pass upon this question. Now, I am perfectly satisfied to say, that the Department of Excise should go into the State Board of Tax Commissioners, but the majority may see fit to put it under the Prison Commission.

Mr. Wickersham — Will the gentleman explain precisely what change he would make?

Mr. A. E. Smith — I would say that I would not allow any statutory law to be effective until the end of this present administration. In other words, what the Legislature does next year is to become effective on the first of January, 1917.

Mr. Wickersham — I understand that the gentleman does not object to, rather he favors having the Legislature next year, or the early part of the session, make this distribution?

Mr. A. E. Smith — Yes.

Mr. Wickersham — But that it should be made effective, not until the first day of January, 1917.

Mr. A. E. Smith — Right. I think that ought to be. Now I want to say something about the question that the chairman of the Committee raised about Bear Mountain and Mohansic and Wingdale. Let us get this clearly in our minds. What happened in this prison or with this prison and these hospital sites is not at all to be charged to any board or commission in this State. Every action that was taken with regard to the Bear Mountain, Wingdale and Mohansic propositions represented the ideas of the Governor. It was the policy of the Governor, what he thought about it.

Mr. Wadsworth — This action was not taken on the recommendation of the State Board of Charities or the Prison Commission, or the Hospital Commission?

Mr. A. E. Smith — Absolutely not. Everybody was satisfied to put the prison on Bear Mountain. Nobody had any complaint about it, but for some reason or other Governor Hughes did not want it there, and he said, put it over on the other side of the river, in Dutchess county. All right, they said, we will do what the Governor said. They went out, bought a site in Westchester county and started to build it. They dug out for the foundation and built the foundation; Governor Dix came in, and Governor Dix said that is not the place for a prison. I won't sign an appropriation bill for it and you can't go a step further. You can't charge that up to any mismanagement of any commission. That just represents the idea of the Governor. That is the point I am trying to make, that it is not so much the boards and the commissions in this State that have been responsible for the unbusinesslike things that have been done. Pretty nearly all of them represents the ideas of governors themselves, and you cannot cure that by this bill, and it is going to go on as long as the State goes on. Now, beginning with the departments. The department of justice. Then there is a department of finance. That would be the attorney-general and the comptroller. Now, you have here, the department of treasury. Now, what use have you for the department of treasury? Absolutely no use for it at all, and its presence in here is a direct violation of your platform plank. As long as you are going to read platforms and planks to-day I have a few to read myself. You say, " to prevent the multiplication of offices, we recommend that the various administrative functions of the State be vested in a limited number of departments " and in the

very start off you are creating a new department. Now, there should be no such thing as a State treasurer in this State. We have one now who has ten or fifteen people working for him, one or two clerks, a secretary and a deputy, and I doubt very much if he has as many as fifteen people working for him. So far as the functions of the office are concerned he deposits the moneys in the general fund of the different banks of the State, countersigns the checks and the only time you could possibly know that there was such a person alive in this State as a State treasurer would be when the time would arrive that he would withhold his signature from a check, and the only time he could withhold it would be when he was sure there was no funds in the State to meet them, and he has nobody to check it up. The idea of saying that the department of the treasury is going to be a check upon the comptroller means that you must create another comptroller, and if you are going to check up the great office of the State comptroller in all the activities of his office, you have to have nearly as large an office to check it up. There is no need for it in here at all. The checks that are paid out in this State should be countersigned by the head of the department and not by any treasurer, not by any secretary of any treasury. The head of the department — if an engineer in the Department of Public Works put in a bill for $250 for traveling expenses, and the comptroller audits it, checks it up, and writes a check and sends the warrant over to the Public Works Department, the Superintendent of Public Works should be the one to sign it because the only man in the State that is able to tell whether that engineer had the right to travel $250 worth during the month of May or June is the Superintendent of Public Works.

Mr. Schurman — I see that the treasurer has a staff of eleven persons, two in the exempt class, and nine outside. I also see that his duties are prescribed as follows: "The treasurer is custodian of all moneys paid into the state treasury." Who would, under your suggestion, Mr. Smith, take the place of the treasurer as custodian of money?

Mr. A. E. Smith — The Comptroller — where it ought to be, and where it ought to be in New York city — The State Treasurer bears the same relationship to the Comptroller of the State that the city chamberlain bears to the comptroller in New York city. Mr. Henry Bruere, the city chamberlain, has himself declared over and over again that there is no use for his position, that it should be abolished.

Mr. Stimson — Nevertheless, at the present time, under the law governing New York city, the chamberlain has custody of the city's funds, has he not, and is an officer appointed by the mayor?

Mr. A. E. Smith — Yes.

Mr. Stimson — Well, this Treasurer is an officer supposed to be appointed by the Governor with the custody of the funds.

Mr. A. E. Smith — But that doesn't change the fact that he is entirely useless.

Mr. Stimson — It brings it down to a controversy between Mr. Bruere and the present law.

Mr. A. E. Smith — Not necessarily. I will take a position on that. I will make the statement that his place is absolutely useless, and I will make the further statement that the office of State Treasurer in this State is absolutely useless, because there is not a dollar of money that he puts in a bank that the State is not secured for by a surety bond for the full amount of the money in there. He is nothing but a clerk. He has never performed anything but clerical services. There have been State Treasurers in this State that the elevator man knew, when they were in the State Treasurer's office. How many men can you find who will tell who the State Treasurer was in 1903, '04, '05, '06 or any other year? Never heard of them.

Mr. Quigg — During your long experience in Washington you must have found out that the Comptroller of the United States was an officer of the Treasury Department, didn't you?

Mr. A. E. Smith — Well, I was only in Washington twice in my life. What I have found out about it is from hearsay. If I did go down there I don't think I would go near the treasury, anyway. But I know this, that the responsibility that rests upon the cabinet officers is only nominal. I know that the Secretary of the Treasury is not the man that one would imagine he is. The Comptroller of the Treasury is the real man, who has been there for years and years. I know it took him quite a while to get his name on the bills.

Mr. Wickersham — Do you refer to the Comptroller of the Currency or the Comptroller of the Treasury?

Mr. A. E. Smith — I don't know what name you call him by, but I know he has not the internal management of it at all that people imagine he has; and, after all, he acts merely in an advisory capacity to the President, more in respect to his policies; more on the matter of public policy and not what should be the management of any branch of his department, what policy he should pursue. That is exactly the way you leave it up here, and you cannot have it any other way. In all the advisers that the Governor gathers around him you will not find one out of them that ever advises him how to save a dollar for the State. Every fellow that comes up to advise him has a bill in his pocket for something around his neighborhood. Now, the Department of Accounts. I regard that as pretty nearly a joke. It is another check on the Treasurer, who is a check on the Comptroller and

if we go along far enough you will have it so that one day Albany will be swarming with checkers, one checking the other. Now, let's see about the Department of Accounts here. What did the Governor say about it? We had this very thing — Department of Efficiency and Economy. It was an office of the Commissioner of Accounts. Under the act that created the office he had the right to go through the various departments of the State government and subpoena witnesses and examine books and give an accounting to the Legislature, the Governor, or to anybody that asked for it, of everything that was going on in the State of New York. Here is what the Governor said about him on the first of last January: "The Department of Efficiency and Economy, with a large list of officials drawing from the State salaries ranging from $1,200 to $12,000, is, in my opinion, entirely unnecessary, serves no useful purpose and should be at once abolished." It was forthwith abolished and all the Republican employees of it were moved over into the Comptroller's office and the Democrats were taken down and shown the Union Depot. Now, we come to the Department of Public Works. The Department of Public Works is going to have the construction, care, maintenance and operation of the State's public works, including canals, highways, public buildings, etc. That official, if he ever exists in this State, should be elected by the people of this State. He never should be appointed by any Governor. It doesn't make any difference how much he spends in a week, his influence in this State would be unquestioned. You cannot compare it with the United States Army, where the work is spread out all over the United States. This work in this State has been used for political purposes. I don't say that; that is what your Governor says. Wait until I read it to you. Here is what he says in his annual message to the Legislature on the first of January: "While, as a general principle of government and of business, I believe in the undivided responsibility of a single head, there are a number of reasons that lead to believe that the department of highways in this State can best be administered by a nonpartisan commission of three members with overlapping terms. The fact that the State has been and is spending tremendous sums of moneys in the construction, repair and maintenance of its highways and that the accomplishment of this work requires the employment of a vast number of men, has perhaps naturally caused this department to be regarded as a greater political asset for the party in power than are all the other departments combined. That the vast machinery of the department has been used very largely for partisan purposes, there can be no question." Now, that information was imparted to a Republican Governor, apparently, by a Democratic commissioner

of highways, for he consulted him about it. Now, you propose to put that in with the canals, with the State architect and with all the public buildings throughout the State and give that to one man. Just think for a minute. Why, if that happens, the day may come when in this State they will refer to that as the "Folly of the 1915 Constitutional Convention." Take your own Governor's word for it, don't take mine. You will have a chance to vote on that because such an amendment will be offered. Give me that department with the appropriation for the maintenance and repairs of the canals, plus the coming $50,000,000 for the construction of the roads, and the county that don't bring its delegates to me, I will send after them. The Department of Health and the Department of Agriculture, the Department of Charities and Corrections, the Department of Insurance, the Department of Labor and Industry, the Department of Public Utilities, the Department of Conservation, and the Department of Civil Service. I am not sure that the Civil Service Commission should be mentioned in the Constitution at all, but I am open on that. If there is anything said about it later, I am willing to change my mind. Now, I take exception to line 24, on page 2, of the bill: "No new departments shall be created hereafter." I submit that that is altogether too much of a check on the Legislature. The man does not sit aroung this chamber that can tell to-day what activity this State may be obliged to engage in five or ten years from now. Suppose the operation of the canals is a work of such magnitude that there should be brought to it some new kind of idea of management, some new thought. Suppose that twenty years ago this was put into the Constitution what would become of all the activities of the State that have sprung up in that time, new lines of business? I think it is a mistake. That brings me now to section 5, on page 3, line 23. Everything in the bill after that should come out until you come down to the Department of Education and the Public Service Commissions. Now let us take the first one of them. As to the Department of Accounts, of course, I say there is no occasion for that at all. The present law gives the Governor ample power. Under the Moreland act, he can go through any department of this State at any time and do all the accounting and subpoenaing of books, papers and witnesses that he pleases.

Mr. Tanner — Did you approve of the passage of the law creating the Department of Efficiency and Economy?

Mr. A. E. Smith — Did I approve of doing away with it?

Mr. Tanner — No, the law creating it.

Mr. A. E. Smith — Yes.

Mr. Tanner — If the commissioner of accounts performs the same functions, why don't you approve of that department?

Mr. A. E. Smith — Because I don't believe in putting it in the Constitution.

Mr. Tanner — You approved of the Department at that time?

Mr. A. E. Smith — I did at the time, yes, at the time it was created, and I opposed the abolition of it this winter. But that is not saying that I am going to put the commissioner of accounts in the Constitution, because I am following your platform of unnecessary offices. Now take section 9, the department of public works. Here is something that I seriously object to, something — although it doesn't say so in so many words, it says, in intent and spirit: "keep politics out of the Constitution." Don't let the Board of Regents, because they happen to be the Board of Regents, come over here and have an exception that they can for all time take care of their building over there but the superintendent of public works must take care of the rest of the buildings in the State, from John Boyd Thatcher's Mansion up to the Capitol itself, leaving right across here a building that should, if any building should, be under the superintendent of public works. That is in the interest of efficiency and economy. That building is excluded for all time by the Constitution from the supervision of the superintendent of public works.

Mr. Tanner — Is it not your construction of line 11, when it says "All public buildings not assigned by law to any other department,"— that the Legislature can do it?

Mr. A. E. Smith — No, not assigned by law at the time this takes effect.

Mr. Stimson — Would your present objection be entirely removed if the words read "not from time to time assigned by law"?

Mr. A. E. Smith — Where would you put that?

Mr. Stimson — Immediately after the words "from time to time."

Mr. A. E. Smith — No, sir; because I will tell you the reason why. The care and custody of that building is now assigned by law to the Regents. And I have an idea this fixes it.

Mr. Wickersham — Would the words "heretofore" or "hereafter" meet your objection?

Mr. A. E. Smith — No. You must remember you are giving the head of the Department of Public Works the supervision of all the public buildings of the State, except the Department of Education. That is the effect of that.

Mr. Stimson — I think I remember the views of the committee correctly when I say there is no intention of giving to that clause the meaning which you attribute to it. The intention of the committee was simply that it should except from the control of the

Department of Public Works such buildings as might from time to time be assigned to other custody by statute.

Mr. A. E. Smith — Well, that is not what you say.

Mr. Stimson — That could be easily remedied by a slight amendment, if you had any doubt about the question.

Mr. A. E. Smith — There is no doubt in my mind. I don't know what the Committee had in mind, but there is no doubt about what that does. And I base it upon my experience of 1913 in trying to put that building under the Superintendent of Public Works. Now: "The head of the department of the treasury should be the treasurer." That should come out. "The head of the department of taxation shall be the State tax commission, to consist of three members." Why should that be in the Constitution? What possible reason can anybody give for writing that into the Constitution, for twenty years?

Mr. Brackett — If the gentleman will yield, I will give him the most important reason. The votes of that Committee were needed to get the bill through.

Mr. Wagner — I would like to ask, did the gentleman from Saratoga intimate there was any politics in the make-up of this bill?

Mr. Brackett — Now, sit down.

Mr. A. E. Smith — I would say that that, while it may not in the letter, it unquestionably in spirit violates your platform and prevents the Legislature from at any time in the interest of economy or to fix responsibility, reducing that State tax commission to where it probably should be — a single-headed commission. You have one man, the Superintendent of Public Works, to spend twenty-seven million finishing a canal, and a million dollars a year for operating it, fifty millions of dollars as for the construction of good roads, the office of the State architect under his direct control and supervision, and every public building in the State; and in the same document that you give that much control to one man, you provide that the tax department shall for twenty years to come be presided over by three men. Now, read the platform and find out that is not right. "The head of the department of state shall be the secretary of state." Now, what is the sense of saying the head of a department of health shall be the commissioner of health? Why should that be in the Constitution? Supposing for some unknown reason, something we cannot possibly tell about to-day, because the protection of the health of the people I consider to be one of the greatest functions of the government — supposing it became necessary to put at the head of the department more than one man. You will have to amend the Constitution. You have gone far enough when you say

there shall be a department of health. Why should you say that the head of that department of health shall be the health commissioner, aside from the limit that it may put upon the Legislature at any future time when it doesn't seem to be successful? It seems to me it would be equally as sensible to say that a red-headed man must have red hair. Now, "The head of the department of agriculture shall be the commissioner of agriculture." Useless. The department of charities and correction contains some other matter about the supervision of State charities, etc. That may be all right in order to bring it in conformity with the other article. I find no fault with that, "The head of the department of banking shall be the superintendent of banks." "The head of the department of insurance shall be the superintendent of insurance." "The head of the department of labor and industry shall be an industrial commission." Ah, ha! Here we are. There we are. That is giving constitutional approval to what happened here last winter. Now, is there a man around this chamber ready to say that that is going to be successful? It is not organized yet. Not until the first day of October does the million dollars that was appropriated become available. Who here can tell whether the administration of the workmen's compensation under an industrial commission is going to be a success? Why tie us up to it for twenty years to come? Isn't it enough to say that there shall be a department of labor and industry? Why should it be presided over by an industrial commission? Why, if the terms of office of the different men that make it up now had run out on the first of January of this year, you would not have it. The department of education is all right. Why should there be anything here about "The department of conservation shall be under the direction of the Conservation Commission?" You say you are to have a conservation commission. That is enough. Civil service. Now there is talk about responsibility and fixing responsibility on the Governor. Just look at what you have in this civil service proposition. They shall be appointed for terms of six years. Now you are going to tie a Governor all up with a civil service commission that came from another administration, with other ideas. Why should that be in the Constitution? My idea of fixing responsibility on the Governor is to make the terms of office of all of his appointees particularly, and above all, the Civil Service Commission, absolutely co-terminous with his own. Any man that comes into the Governor's chair here, if there is one set of State officials he wants to bring in with him, it is the Civil Service Commission, and it should be so. And if you are going to tie any Governor up with commissioners appointed for six years,

then cut out of that platform the idea of giving him undivided and absolute responsibilities.

Mr. Wickersham — Why should the Civil Service Commissioners come and go with the Governor? What connection is there between their administration of the civil service laws and the policy of the Governor?

Mr. A. E. Smith — Why, it is absolutely related; absolutely. It is the only one commission that absolutely deals with the Governor under the Civil Service Law. He signs the resolution exempting the places and putting them back in the civil service. The history of the manipulation of the distribution of patronage of this State for the last nine years shows clearly and conclusively that the function of administering the Civil Service Law should be centered immediately on the Governor himself. I would do away with the Civil Service Commission entirely if I had my way, and I would say to every man when he is elected Governor, "You say whether this is to be in the classified service or exempt." But if that is too much of a burden, if he has not the time, surely let him have his own commission. What happened in 1910 when it was found that Dix was elected? There was a grand rush here. They wore out the pavements up to the Civil Service Commission getting the places put in under the Civil service, to protect them all. Then when the other people came in they wore out the carpet into the Court of Appeals getting them taken out again, and the Court of Appeals held the Commission had a right to do what it liked. We had the tax appraiser and the tax appraisal commission in to-day, out to-morrow, back in again, back out again, and finally the Court of Appeals stopped the whole thing and said leave it out. Now, if that is not a department of the State over which the Governor should have responsibility, what other department is there?

Mr. Wickersham — On the very statement of facts you have made, isn't it perfectly clear that the whole subject ought to be so placed that the Civil Service of the State could not be made the football of partisan politics or the whim and caprice of successive Governors, and ought we not here to provide some means of putting an end to that sort of thing and lift the Civil Service of this State somehow up out of the rut of that sort of thing?

Mr. A. E. Smith — Why, that sounds fine. I am for that strong. You show me the three commissioners that will do that. You show me the three commissioners that will sit up there and do that, and when they are called down to the Governor's office, will refuse to exempt a place for him.

Mr. Wickersham — I will show you the three commissioners if you will make their term of office and their tenure of office independent of the Governor.

M,. A. E. Smith — Well, that is a question of opinion. We pay these Civil Service Commissioners two thousand dollars a year and they are working all the time and you are going to get me the men who won't be subject to the Governor or to anybody else around this building — I would like to see them.

Mr. Wickersham — Shouldn't we pay them more?

Mr. A. E. Smith — Well, yes.

Mr. Wickersham — That is the question. Is there any higher duty resting upon the officials, or lawmakers, or Constitution-makers, of this State than to somehow or other work out a plan that will protect the civil service of this State against the sort of thing you so eloquently described?

Mr. A. E. Smith — Well, but you have to make over human nature before you can do that. Do you know the reason why they are getting $2,500?

Mr. Wickersham — I do.

Mr. A. E. Smith — You do.

Mr. Wickersham — Just so you can have the kind of men you describe filling their places.

Mr. A. E. Smith — No, no; not at all. We have some big men there. Mr. Ordway is quite a man, and so is William Gorham Rice. They are only getting $2,500. Because the majority in this House and that House deliberately said that is all they would give them, because they would not do anything for them.

Mr. Wickersham — Fortunately we have men like those now. How long can we keep them at $2,500 a year?

Mr. A. E. Smith — I don't know. I don't think you would keep them a minute under a change of administration.

Mr. Wickersham — That is why I want something to prevent their being at the caprice of every incoming administration.

Mr. A. E. Smith — Well, I will have to disagree with you *in toto*. My experience has been that you have to let the Governor be responsible for that Civil Service Commission, or you will never get any place. Now if you can get your men who won't pay any attention to anybody to run it, all right. I will have to be shown.

Mr. Rhees — Will you tell me when the salary schedule of the Civil Service Commissioners was changed from $5,000, which was fixed in the law of 1913, to $2,500?

Mr. A. E. Smith — This year.

Mr. Rhees — I had seen no report of that action.

Mr. A. E. Smith — Yes. The majority leader on the floor of this House reduced it to $2,500, but at the time that happened, the general belief was that the Democrats were to stay. Now, that brings it down to the heads of the department, Section 20. Now let us

see what you do to the platform there. Section 20, on page 6. Let us see what violence you do, not only to your own, but to our platform. The Governor has the absolute power of removal. That is right, but when it comes to appointing, has he got the absolute power of appointment? Not at all. Not at all. He can only do it "by and with the advice and consent of the Senate." Now, that is not fixing responsibility; and that will operate entirely to defeat the other plan, because if you have a Democratic Governor and a Republican Senate, it won't do them a bit of good to remove one of them, because he won't be able to put the man back in his place. Now I call your attention to a little history: When Governor Hughes came into this capitol in 1907, everybody in this State believed that he knew something about the insurance situation in this State. He had just passed a new code of insurance laws; and the duty devolved upon him immediately of reorganizing the Insurance Department, and what did he do? He turned to the statute and found that the Superintendent of Insurance could only be removed by the Senate. He preferred charges against him. The Senate was of his own party. Weeks and weeks and weeks were spent in that body over there, and dollar after dollar of the State's money went into stenographic fees. To sum it all up, the great Governor of the State charged with responsibility, said, "I believe this man lacks the force and the initiative that I regard as necessary in a man to be at the head of this newly organized department of insurance," and what did the Senate say? The Senate said, "You are mistaken. He is going to stay right there." And he stayed there. Now, if you mean it, and you want to do it right, just take that out of there, and let the Governor appoint anybody he likes, and don't have him begging around the doors of the Senate.

Mr. Tanner — Will you vote for that provision?

Mr. A. E. Smith — Yes, sir; I am going to offer that as an amendment. I am trying to get you to vote for it. Now, the next one is Section 21, providing for the removal of the Comptroller and the Attorney-General. The fault I find with that is, that if the Legislature is in session, they should name by joint ballot as they always have, a successor to an elected official. In other words, it does not seem proper, it does not seem to fit into the scheme of things, that the Governor can prefer charges against an official elected alongside of him on the ticket and then have the naming of his successor. It may be all right for the appointed officials and heads of departments, but it is not all right when it comes to elected officials. The successor to the Comptroller or the Attorney-General, in case of their death or removal for cause, should be elected by joint ballot of both houses, as always has been the case. Now, that is about all I can think of, and I am going

to ask this Convention to believe that that study of it was made in the interests of the bill itself, and I take it when we get down to the different sections we will be in a position to offer our amendments. I have mine ready here, and while we are out at lunch we will all read over the two platforms, and if you read them over carefully as I have read them, I will not have any trouble putting every one of my amendments into the bill.

Mr. Stanchfield—In harmony with the debate that took place between Mr. Smith and Mr. Tanner, I offer the following amendment, which I had prepared before that took place. I want to call the attention of the Committee to it. Page 6, Section 20.

Mr. Wickersham — Would it not be better, Mr. Chairman, to go along and take it up section by section, following the rule?

Mr. Stanchfield — I would prefer to have this amendment lodged in the minds of the Committee so that they shall have time to consider it during their recess.

Mr. Wickersham — Well, all right; but, after that, I shall ask for consideration by the Committee section by section.

The Chairman — The Chair would call attention to the statement of General Wickersham, which is in accordance with the rules, but he does not press it at this time.

Mr. Stanchfield — I understood that he does not press it now.

Mr. Wickersham — I withdraw my objection at this time.

Mr. Stanchfield — Page 6, section 20, line 5. Strike out "by and with the advice and consent of the senate", and on line 6, strike out the words "the governor" and insert the word "him". I propose to discuss that later, Mr. Chairman, if you please, and not now.

Mr. Bockes — Mr. Chairman, in the statement of the Chairman of the committee on Governor and Other State Officers he referred to the platform of the Republican party as indicative of the feeling of the party at that time, and I think that is proper argument, but when he referred to the resolution of the 1914 Assembly, I believe that is not proper argument, for the reason that that Assembly, coming as it did between the platform and this Convention, was put in a peculiar position, and, in view of his reference to my activity there, I wish to tell it as just an illustration of what I mean. For instance, in the 1914 Assembly, when the subject of the short ballot resolution came up, I, for one, and there is a Republican member of this Convention who was a member of that Assembly and who heard me say it, I remember my exact words, I said, "Why, this short ballot talk, and so on, it makes us folks up State have the stomach ache," and there was quite a revolution until somebody said we can stand on the platform, there is going to be a Constitutional Convention next year

and they will have to take up the subject. Now, under those circumstances, the fact that an unanimous resolution went through the 1914 Assembly, when you consider the obligations of an ordinary Assemblyman to his party platform, it really means nothing. With regard to my minority report, if my minority report explains what I had in mind, and I believe it does, the only objections mentioned in my minority report, except with reference to the short ballot, have been obviated by this addition to the Governor and Other State Officials' bill. Now, if my minority bill had anything to do with this, I am proud of it rather than ashamed of it.

Mr. Ostrander — The gentleman from New York inquired how there came to be so many departments here. I recall an occasion of which I have read when a number gathered around a great character in history and said, "Oh, Master, what shall we do to inherit eternal life?" If that question should be asked of the various committees who have constructed this article, I think the answer would have been, we will put you in the Constitution.

If there is a bureau clerk anywhere up and down in the State who has not been provided for in the Constitution, he is a little slow or else he has not much influence. We have been treated to very much simplification. I suppose most of the gentlemen here have some time or another innocently or otherwise sat in a game. They know that the hands will be shuffled and dealt differently from time to time, but anyone who has studied the structure of the game at all knows that there are always fifty-two cards in the pack and so, however, we may shift these departments, reclassify them, it will be a long time before any of the cards are shaken out of the pack. They will all be there. We have heard here how so and so introduced a resolution in the Republican Convention that we should have a shorter ballot. We have heard how so and so introduced a resolution into the Democratic Convention that we have a shorter ballot. I am struck by the similarity of the reading of those resolutions. I will assume that the fair-haired young men who introduced them did not know exactly where they came from, or what they meant. Someone knew but that someone did not stake his chances on one party. He had them introduced in both. Some one has hovered over the political situation for years. This is no new game. Someone has seen to it that the public mind was prepared as much as possible for this situation. I will assume that it was not one breed of politicians alone who silently flitted out of the Metropolitan when it was 214 and let their friends have it; I will assume that there were other gentlemen of every political complexion who took part in this. Now, this demand for a short ballot, if I may use a very homely expression,

is somewhat like a pile of poker chips. It grew from the top down. It did not grow from the bottom up. People did not go out of their own accord, and start a campaign several years ago to bring about this short ballot who did not have any interest in it. Articles have not been printed for years at considerable expense in papers of different political complexion; have not been unanimously agreed to by the leaders of the antagonistic parties unless something was behind it and some reason was for it. At first we were to have but two elective officers. It always happens in Congress, I am told, that the pork barrel has to be large enough to contain the majority and so the people who were to be included in this scheme have been enlarged upon a little so as to grease the ways for it and to silence opposition to it and the master minds and the spencerians have seen to it that the interests should be taken care of. We are told that the Governor has an exceedingly hard time to find men capable of administering the business of the State. Perhaps if he were permitted to know he would learn that the people have just as many troubles in getting governors fit for that purpose as the Governor has in getting other people. Now why should we extend our sympathy to him in his trouble? Great universities, at least and business enterprises get good men at salaries equal to or less than we pay some of these department heads. Occasionally, we find a fairly educated man upon the bench, and of course the judge of the Court of Appeals does not get as much as some of these officers. None of the judges anywhere on the bench gets as much salary as he could make at the bar. We pay a good deal less to tell what the law is than to tell how to get around it, and I shall say whatever remarks I make as to the Governor are not made to our present Governor. It applies to the Governors who have been before and to the Governors who will come hereafter — a long procession of them like the procession of the ghosts in the old plays. Governors are most always made of men. You cannot elect a man to be an engine driver nor can you elect him to be an engineer or a physician, but you can elect him to be Governor. Now these Governors desire to get good men and the very reason why he doesn't get them is because that great desire to get good men is limited and circumscribed by his desire to find them in some particular place, either among classmates or relatives, or among people who will be useful in some other way, and of course the more rings you begin to draw around this possibility the more difficult it is to get a man to fit. Why do we have so many sons-in-law in the public service? If a man were looking for an old salt or an accountant or somebody who would make an able harbor-master would anybody think that he must be a son-in-law first? If a man were

looking for a secretary of the treasury, would he necessarily have to be a son-in-law first?

Mr. Wickersham — He might become a son-in-law?

Mr. Ostrander — He might, under circumstances such as have existed. If he had been very successful with some financial enterprise and got his backers in bad and could improve their condition by being a son-in-law and being a secretary, probably he might be. Another difficulty with the Governor's search for men is that the really competent men, hardly ever come out of their holes and ask for these jobs. I recall a little jocose line that ran in the paper last winter to this effect:

"I do not want to be a kicker,
I want to live in peace;
But the axle that is squeaking
Is the one that gets the grease."

That principle very often intervenes by obstructing the Governor in his search for the best men. When he goes outside his circle, outside the classmates, outside the sons of his friends, the friends of his wife, etc., he runs into another complication. Years ago, I think it was down in Alabama, there was a big prize fight to be pulled off — the Sullivan-Kilrain fight, if I remember. It is a great many years ago and I am not very keen for those things. The Governor said it must be stopped and this is Bob Burdette's very precise account of what happened:

"The Governor sat in his easy chair
With his eyeglass in his eye,
'Has anyone seen three railroad trains
And three thousand men go by?'"

Then the narrative continues, how he looked behind the desk, how he looked into the well, how he went into the next room and looked into the umbrella, but he never found those three railroad trains or those three thousand men until, as the story concludes:

"Well for the Governor had it been
And the land of the Sunny South
If the Governor had talked with his smooth-bore eye
And looked with his long-range mouth."

That is another trouble that interferes with these things. The Governor hardly ever looks for a splendid executive or head of a department among his rivals. It never occurs to him that that sort of a man would serve the State well and yet the State has

need of those men. But none of those men fit his conditions. It is a singular thing that, if you looked for a trust-buster in the recent years, before the present administration, you would find he was a Progressive and you would find that he was a great campaigner or contributor to the campaign. If you looked for a trust-buster under the Wilson administration, you will not find one of those fellows among them. His men come from another kind of campaigners. Just imagine the "Big Stick" removing Mr. Pinchot and putting a man that was a real man in there. I am speaking perhaps a little more personally than I ought to but simply for the purpose of illustration and to show how the executive mind works along certain grooves. Yet, we have had men who were large enough to do that. Mr. Lincoln formed a cabinet of his rivals and I do not think it suffers by comparison with the appointees of any Executive since. I do not think we may ever look for any first-class service from the State so long as the executive will cut down his rivals whose services the State needs. Again, the Governor's look is always obscured. He has a "blind side." The day that he is nominated a certain matter begins to take possession of his mind. The day he is elected, something else, or rather, the same matter, in a stronger sense, has come along to him. The first thing he does after he has his opportunity is to swear into office. The second thing he does is to say that on no occasion or under any circumstances will he ever be a candidate for anything again. The next thing he does is to hire his special train and begin to campaign the State. Every Governor hears his voice. The Presidency has called him at once. In recent times Dix heard it, Sulzer heard it — they all heard it. I used to hear of an old farmer up home who spoke of a half-baked fellow in the neighborhood. He said he had been called to preach and the farmer asked him, "Didn't you make a little mistake? Wasn't that a call to ditch instead of preach?" The people don't care how the delegates from the State of Nebraska regard the Governor half so much as they do about what he is going to do. It is a strange thing that the Governor never has time to light his old cob pipe and sit in the departments and see what is going on there. He is like a man described in the speech of William Wirt which we all learned in the old readers, that great speech on "Blennerhassett's Temptation." One line runs: "Greater things have taken possession of his soul." This presidential bee that buzzes up and down frequently stings the people, and often the candidate is stung, but still he pursues, with a certainty that can always be trusted. There is no Governor, as I believe, that is fit to be trusted with autocratic power. We

seldom get a large man for Governor. It is generally the available man. We do not call into question his qualifications half as much as we do how he will take with the soldier vote, how he will be with the labor people, and how he will be among the firemen, and a lot of other things, and that usually determines the nominee. The people do not want the balances which were wisely devised by our forefathers to be too much upset. It is a very cunning thing to have almost an all-powerful Governor if he is your Governor, but if he happens to be the other fellow's Governor it doesn't fit half so well on you. If the balance is disturbed between the different departments of government we can begin to mark the decay of things from that precise period. There is no officer so safe in his place as the appointed officer. There is no department of the government in which so many scandals have occurred as in the appointive departments. People hate, and will hesitate, to pull down the whole temple in order to get at the trouble in one department here, and yet that is what we are going to make them do. If the Excise Department goes wrong, if the Public Works Department gets crooked, we hate to have to pull down the Governor and pull down all the rest of the departments to correct that. If the people could get at that department directly, they would attend to it and attend to it very quickly. And, beyond that, they would not have to attend to it because the man who is elected always has a little fear of God in his heart, and he stops short of a good many things that the appointive man does not. The appointed fellows are "pa's boys" generally. They know he will protect them. If it is before election he has got to protect them for his own sake and he hides it; when it is after election, they got by that time and there is no necessity then of being so careful. No one is so hard to reach as an appointive officer. We hear a great deal about responsibility. You know we kind of have periods along in our lives when some particular word sounds awfully good to the people. There was an old lady who liked her preacher above all other preachers because he said "Shibboleth," and "Mesapotamia" and a lot of other words like that. She said she did not know what they meant but they sounded awfully good to her. Let us see about responsibility. The burglar doesn't care much if he has gotten away with his booty. The intrenched officer with all the patronage in the State at his command, down to the last laborer on the road, will be in his place a generation before you will ever get him out. If you are going to put everything into the Governor's basket, so that he can mediately or immediately control every officer, you will find very often he is going to be a hard man to get rid of. You remember what Caesar did when he came to the Rubicon with Rome ahead of him and all that

Rome meant to him. Did his sense of responsibility stop him at the Rubicon? My reading of history is that he went on. Then there is Panama. Did our sense of responsibility to a friendly State prevent our fomenting a rebellion and taking a good slice of territory which we wanted very badly? It was not exactly moral, but we got away with it. Recently a gentleman on the other side of the water had a "scrap of paper" in relation to Belgium. His responsibility to civilization and to the world did not stop his grinding Belgium into the ground. Nowhere along the line where unlimited power is given does a sense of responsibility ever stop the exercise of that power. No man, no wrongdoer in all history was ever stopped by his sense of responsibility.

We have had executives who very plainly intimated that they would appoint a bench that would nullify the Constitution if necessary. I guess they would have done it, if it was necessary, for power. I suppose their youth was about the only thing that ever stopped us from administration by the Abernathy Boys. What the people want is not a greater sense of responsibility or more responsibility to hold the Governor off, but they want a little more horse sense in the Governor. They want attention to their business more than they want attention to the Governor's future and yet, it is impossible, apparently, with all the ingeniousness that has ever been devised, to separate the two. How much time is the Governor going to have to devote to all these things? He has got 1,300 pardons, like most every other Governor that has come in, applications for pardons. They are up in the pigeon holes. The Governor has never had time to look at them. He has sixty-two county fairs, I believe, to attend. I do not know that they have one in Manhattan, but I guess they have a midway. The Governor starts out with his military secretary and he tells the farmers what their land is available for. He performs a multitude of duties like that. And his military secretary, like the old king's jester, "made huge merriment in all the country towns through which they went." How often do you find the Governor sitting up nights trying to bridge the gulf between the consumer and the producer, or removing those barriers? It would be a very welcome thing to many millions of people in this State if he could find some way to reduce somewhat the difference between the 10 and 12 cent milk which the consumer pays for and the 2½ or 3 cent milk which the producer sells. That is merely an illustration of the thousands of things that need correcting and are of a practical every-day type, but which no Governor, in the multiplicity of his duties, has ever had the temerity to tackle. The old parable gave the man an advance because he had been faithful in a few things, and he was made master over many. Is